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H.673

Introduced by Representatives Frank of Underhill, French of Randolph, Haas
of Rochester, Mrowicki of Putney and Pugh of South
Burlington

Referred to Committee on

Date:

Subject: Health care; advance directives; decision-making; surrogate; DNR
order; COLST order

Statement of purpose: This bill proposes to authorize an individual who is not
a principal or agent named in an advance directive, a patient, or a guardian to
give or withhold informed consent for a DNR order or COLST order on behalf
of a patient who lacks capacity.

An act relating to surrogate decision-making

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

As used in this chapter:

* * *

1 (31) “Surrogate” means an individual who is not the principal, patient,
2 agent, or guardian but who is authorized to give or withhold informed consent
3 for a DNR order or COLST order on behalf of a patient who lacks capacity.

4 (A) A surrogate may be:

5 (i) an individual designated by the patient by personally informing
6 the clinician; or

7 (ii) a family member of the patient or a person with a known close
8 relationship to the patient.

9 (B) A surrogate must be:

10 (i) willing to provide or withhold informed consent for a DNR
11 order or COLST order for the patient in accordance with the patient’s known
12 wishes and values; and

13 (ii) willing and available to engage in consultation with the
14 patient’s clinicians.

15 (32) “Suspend” means to terminate the applicability of all or part of an
16 advance directive for a specific period of time or while a specific condition
17 exists.

18 Sec. 2. 18 V.S.A. § 9708(f) is amended to read:

19 (f) The department of health shall ~~promulgate~~ adopt by rule by ~~March 1~~
20 July 1, 2012, criteria for individuals who are not the patient, agent, or guardian,

1 but who are giving or withholding informed consent for a DNR/COLST order.

2 The rules shall include the following:

3 * * *

4 Sec. 3. 18 V.S.A. § 9708(i) is amended to read:

5 (i) Every health care provider, health care facility, and residential care
6 facility shall honor a DNR/COLST order or a DNR identification unless the
7 provider or facility:

8 (1) believes in good faith, after consultation with the agent ~~or~~ guardian,
9 or surrogate, where possible and appropriate, that:

10 (A) the patient wishes to have the DNR/COLST order revoked; or

11 (B) the patient with the DNR identification is not the individual for
12 whom the DNR order was issued; and

13 (2) documents the basis for the good faith belief in the patient's medical
14 record.

15 Sec. 4. 18 V.S.A. § 9709(b) is amended to read:

16 (b)(1) Every health care provider, health care facility, and residential care
17 facility shall develop protocols:

18 ~~(A)~~ to ensure that a principal's advance directive, including any
19 amendment, suspension, or revocation thereof, and DNR/COLST order, if any,
20 are promptly available when services are to be provided, including that the
21 existence of the advance directive, amendment, suspension, revocation, or

1 DNR/COLST order is prominently noted on any file jacket or folder, and that a
2 note is entered into any electronic database of the provider or facility;

3 ~~(2)(B)~~ for maintaining advance directives received from individuals who
4 anticipate future care but are not yet patients of that provider or facility;

5 ~~(3)(C)~~ to ensure that the provider or facility checks the registry at the
6 time any individual without capacity is admitted or provided services to
7 determine whether the individual has an advance directive;

8 ~~(4)(A)(D)(i)~~ to ensure that, unless otherwise specified in an advance
9 directive or guardianship order, an agent or a guardian shall have the same
10 rights a principal with capacity would have to:

11 ~~(i)(I)~~ request, review, receive, and copy any oral or written
12 information regarding the principal's physical or mental health, including
13 medical and hospital records;

14 ~~(ii)(II)~~ participate in any meetings, discussions, or conferences
15 concerning health care decisions related to the principal;

16 ~~(iii)(III)~~ consent to the disclosure of health care information; and

17 ~~(iv)(IV)~~ file a complaint on behalf of the principal regarding a
18 health care provider, health care facility, or residential care facility;

19 (ii) to ensure that, unless otherwise specified in an advance
20 directive or guardianship order, a surrogate shall have the same rights a patient
21 with capacity would have to:

1 (I) request, review, receive, and copy any oral or written
2 information regarding the patient's physical or mental health, including
3 medical and hospital records, provided the information is relevant to the
4 surrogate's decision to consent to or withhold consent for a DNR order or
5 COLST order;

6 (II) participate in any meetings, discussions, or conferences
7 concerning health care decisions related to the surrogate's decision to consent
8 to or withhold consent for a DNR order or COLST order;

9 (III) consent to the disclosure of health care information,
10 provided the disclosure is necessary for the surrogate's decision to consent to
11 or withhold consent for a DNR order or COLST order; and

12 (IV) file a complaint on behalf of the patient regarding a health
13 care provider, health care facility, or residential care facility, provided the
14 complaint is related to the surrogate's consent to or withhold consent for a
15 DNR order or COLST order;

16 ~~(B)~~(2) The exercise of rights under ~~this~~ subdivision (1)(D) of this
17 subsection shall not be construed to waive any privilege provided by law;

18 * * *

1 Sec. 5. 18 V.S.A. § 9711a is added to read:

2 § 9711a. SURROGATE CONSENT FOR DNR ORDERS AND COLST

3 ORDERS

4 (a) A surrogate shall have the authority to provide informed consent, or to
5 withhold informed consent, to a DNR order or COLST order on behalf of a
6 patient without capacity to the same extent that the patient could provide or
7 withhold informed consent if the patient had capacity, subject to:

8 (1) rules adopted pursuant to subsection 9708(f) of this title;

9 (2) other applicable laws or a court order; and

10 (3) the patient's right to refuse treatment.

11 (b)(1) A surrogate shall have the authority to consent to or withhold
12 consent for a DNR order or COLST order only if the patient lacks capacity.

13 (2) A patient with capacity shall retain the authority to consent to or
14 withhold consent for a DNR order or COLST order.

15 (3) The authority of a surrogate to consent to or withhold consent for a
16 DNR order or COLST order shall cease to be effective upon a clinician's
17 determination that the patient has recovered capacity.

18 (c) A surrogate shall have the same rights a patient with capacity would
19 have to:

20 (1) request, review, receive, and copy any oral or written information
21 regarding the patient's physical or mental health, including medical and

1 hospital records, provided the information is relevant to the surrogate's
2 decision to consent to or withhold consent for a DNR order or COLST order;

3 (2) participate in any meetings, discussions, or conferences concerning
4 health care decisions related to the surrogate's decision to consent to or
5 withhold consent for a DNR order or COLST order;

6 (3) consent to the disclosure of health care information, provided the
7 disclosure is necessary for the surrogate's decision to consent to or withhold
8 consent for a DNR order or COLST order; and

9 (4) file a complaint on behalf of the patient regarding a health care
10 provider, health care facility, or residential care facility, provided the
11 complaint is related to the surrogate's decision to consent to or withhold
12 consent for a DNR order or COLST order.

13 Sec. 6. 18 V.S.A. § 9713 is amended to read:

14 § 9713. IMMUNITY

15 (a)(1) No individual acting as an agent or guardian shall be subjected to
16 criminal or civil liability for making a decision in good faith pursuant to the
17 terms of an advance directive, or DNR order, or COLST order and the
18 provisions of this chapter.

19 (2) No individual acting as a surrogate pursuant to this chapter or the
20 rules adopted pursuant to subsection 9708(f) of this title shall be subjected to

1 criminal or civil liability for making a decision in good faith to provide or
2 withhold informed consent for a DNR order or COLST order for a patient.

3 (b)(1) No health care provider, health care facility, residential care facility,
4 or any other person acting for or under such person's control shall, if the
5 provider or facility has complied with the provisions of this chapter and rules
6 adopted pursuant to this chapter, be subject to civil or criminal liability for:

7 (A) providing or withholding treatment or services in good faith
8 pursuant to the direction of a principal or patient, the provisions of an advance
9 directive, a DNR order, a COLST order, a DNR identification, the consent of a
10 principal or patient with capacity ~~or of~~, the consent of a principal's or patient's
11 agent or guardian or a patient's surrogate, or a decision or objection of a
12 principal or patient; or

13 (B) relying in good faith on a suspended or revoked advance
14 directive, suspended or revoked DNR order, or suspended or revoked COLST
15 order, unless the provider or facility knew or should have known of the
16 suspension or revocation.

17 * * *

18 (c) No employee shall be subjected to an adverse employment decision or
19 evaluation for:

20 (1) providing or withholding treatment or services in good faith pursuant
21 to the direction of a principal or patient, the provisions of an advance directive,

1 a DNR order, a COLST order, a DNR identification, the consent of the
2 principal or patient with capacity ~~or, the consent of a principal's or patient's~~
3 agent or guardian or a patient's surrogate, a decision or objection of a principal
4 or patient, or the provisions of this chapter. This subdivision shall not be
5 construed to establish a defense for the failure to follow standards of
6 professional conduct and to exercise due care in the provision of services;

7 * * *

8 Sec. 7. EFFECTIVE DATE

9 (a) Sec. 2 of this act and this section shall take effect upon passage.

10 (b) The remaining sections of this act shall take effect on July 1, 2012.