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SENATE BILL NO. 71

Senate Amendments in [] - January 26, 2026

A BILL to amend and reenact §§ 54.1-2982, 54.1-2986, and 54.1-2986.2 of the Code of Virginia, relating to Health Care Decisions Act; patients incapable of informed decisions; absence of next of kin.

Patron Prior to Engrossment—Senator Favola

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2982, 54.1-2986, and 54.1-2986.2 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2982. Definitions.

As used in this article:

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983.

"Agent" means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § 54.1-2983, to make health care decisions for him. The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ 32.1-291.1 et seq.) of Chapter 8 of Title 32.1.

"Attending physician" means the primary physician who has responsibility for the health care of the patient.

"Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.

"Declarant" means an adult who makes an advance directive, as defined in this article, while capable of making and communicating an informed decision.

"Durable Do Not Resuscitate Order" means a written physician's order issued pursuant to § 54.1-2987.1 to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as an advance directive.

"Health care" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability, including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital, nursing home, assisted living facility, or other health care facility; psychiatric or other mental health treatment; and life-prolonging procedures and palliative care.

"Health care provider" shall have the same meaning as provided in § 8.01-581.1.

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, intellectual disability, or any other mental or physical disorder that precludes communication or impairs judgment, to make an informed decision about providing, continuing, withholding or withdrawing a specific health care treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed health care decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

"Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition. However, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of pain relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and 54.1-3408.1. For purposes of §§ 54.1-2986, 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation.

"Patient care consulting committee" means a committee duly organized by a facility licensed to provide health care under Title 32.1 or Title 37.2, or a hospital or nursing home as defined in § 32.1-123 owned or

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operated by an agency of the Commonwealth that is exempt from licensure pursuant to § 32.1-124, to consult on health care issues only as authorized in this article. Each patient care consulting committee shall consist of five individuals, including at least one physician, one person licensed or holding a multistate licensure privilege under Chapter 30 (§ 54.1-3000 et seq.) to practice professional nursing, and one individual responsible for the provision of social services to patients of the facility. At least one committee member shall have experience in clinical ethics and at least two committee members shall have no employment or contractual relationship with the facility or any involvement in the management, operations, or governance of the facility, other than serving on the patient care consulting committee. A patient care consulting committee may be organized as a subcommittee of a standing ethics or other committee established by the facility or may be a separate and distinct committee. Four members of the patient care consulting committee shall constitute a quorum of the patient care consulting committee.

"Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.

"Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the health care is to be rendered or withheld.

"Qualified advance directive facilitator" means a person who has successfully completed a training program approved by the Department of Health for providing assistance in completing and executing a written advance directive, including successful demonstration of competence in assisting a person in completing and executing a valid advance directive and successful passage of a written examination.

"Terminal condition" means a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is in a persistent vegetative state.

"Witness" means any person over the age of 18, including a spouse or blood relative of the declarant. Employees of health care facilities and physician's offices, who act in good faith, shall be permitted to serve as witnesses for purposes of this article.

§ 54.1-2986. Procedure in absence of an advance directive; procedure for advance directive without agent; no presumption; persons who may authorize health care for patients incapable of informed decisions.

A. Whenever a patient is determined to be incapable of making an informed decision and (i) has not made an advance directive in accordance with this article or (ii) has made an advance directive in accordance with this article that does not indicate his wishes with respect to the health care at issue and does not appoint an agent, the attending physician may, upon compliance with the provisions of this section, provide, continue, withhold, or withdraw health care upon the authorization of any of the following persons, in the specified order of priority, if the physician is not aware of any available, willing, and capable person in a higher class:

1. A guardian for the patient. This subdivision shall not be construed to require such appointment in order that a health care decision can be made under this section; ~~or~~

2. The patient's spouse except where a divorce action has been filed and the divorce is not final; ~~or~~

3. An adult child of the patient; ~~or~~

4. A parent of the patient; ~~or~~

5. An adult ~~brother or sister~~ sibling of the patient; ~~or~~

6. Any other relative of the patient in the descending order of blood relationship; ~~or~~

7. ~~Except in cases in which the proposed treatment recommendation involves the withholding or withdrawing of a life-prolonging procedure, any~~ Any adult, except any director, employee, or agent of a health care provider currently involved in the care of the patient, who (i) has exhibited special care and concern for the patient and (ii) is familiar with the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding health care, to the extent that they are known. A quorum of a patient care consulting committee as defined in § 54.1-2982 of the facility where the patient is receiving health care or, if such patient care consulting committee does not exist or if a quorum of such patient care consulting committee is not reasonably available, two physicians who (a) are not currently involved in the care of the patient, (b) are not employed by the facility where the patient is receiving health care, and (c) do not practice medicine in the same professional business entity as the attending physician shall determine whether a person meets these criteria and shall document the information relied upon in making such determination.

If two or more of the persons listed in the same class in subdivisions A 3 through A 7 with equal decision-making priority inform the attending physician that they disagree as to a particular health care decision, the attending physician may rely on the authorization of a majority of the reasonably available members of that class.

8. *If none of the persons listed in subdivisions 3 through 7 are reasonably available, health care decisions may be made by a patient care consulting committee, as defined in § 54.1-2982, of the facility where the patient is receiving health care. The patient care consulting committee shall function strictly as the patient's*

advocate, shall not include as a member any person on the patient's treatment team, nor shall it represent the interests of the health care facility. The committee's findings [~~or recommendations~~ and decisions shall be informed by reasonably available information from the patient's prior health care providers, caretakers, advocates, or others familiar with the patient and the patient's preferences, and] shall reflect consensus reached at a meeting with a quorum present and shall be documented. In all circumstances, decision-making shall conform to the standards established in subsection B of § 54.1-2986.1 and be made in a manner described as follows:

a. The committee shall authorize a plan of care or goals of care, and the attending physician shall update the committee as appropriate and consistent with standards of medical practice.

b. Subsequent interventions that, either by law or by facility policy, require signed consent may be authorized by the patient care consulting committee or, if authorization is needed before the committee can next reasonably reconvene, then by agreement that the intervention is consistent with the authorized plan or goals of care between the attending physician and either a second physician, nurse practitioner, physician assistant, or ethics officer who is not a member of the patient's primary treatment team, does not serve in a capacity of decision-making, influence, or responsibility over the attending physician, and is not under the attending physician's decision-making, influence, or responsibility; and the committee shall be notified promptly.

c. A decision to withhold or withdraw life-sustaining treatment or a life-prolonging procedure may be made only by agreement among the patient care consulting committee, the attending physician, and either a second physician, nurse practitioner, physician assistant, or ethics officer who is not a member of the patient's primary treatment team, does not serve in a capacity of decision-making, influence, or responsibility over the attending physician, and is not under the attending physician's decision-making, influence, or responsibility.

d. Nothing in this subdivision shall limit the authority of the attending physician or other members of the health care team to intervene in an emergency, where intervention is needed immediately to prevent death or serious injury, consistent with the plan or goals of care established by the patient care consulting committee or on behalf of a patient for whom the committee has not yet met.

When health care decisions are made under subdivision 8, the facility shall continue good faith efforts to identify and locate a person in a preceding level of priority.

No individual serving on a facility's patient care consulting committee shall be subject to criminal prosecution or civil liability for any act or omission done or made in good faith in the performance of such functions.

B. Regardless of the absence of an advance directive, if the patient has expressed his intent to be an organ donor in any written document, no person noted in this section shall revoke, or in any way hinder, such organ donation.

§ 54.1-2986.2. Health care decisions in the event of patient protest.

A. Except as provided in subsection B or C, the provisions of this article shall not authorize providing, continuing, withholding or withdrawing health care if the patient's attending physician knows that such action is protested by the patient.

B. A patient's agent may make a health care decision over the protest of a patient who is incapable of making an informed decision if:

1. The patient's advance directive explicitly authorizes the patient's agent to make the health care decision at issue, even over the patient's later protest, and an attending licensed physician, a licensed clinical psychologist, a licensed physician assistant, a licensed advanced practice registered nurse, a licensed professional counselor, or a licensed clinical social worker who is familiar with the patient attested in writing at the time the advance directive was made that the patient was capable of making an informed decision and understood the consequences of the provision;

2. The decision does not involve withholding or withdrawing life-prolonging procedures; and

3. The health care that is to be provided, continued, withheld or withdrawn is determined and documented by the patient's attending physician to be medically appropriate and is otherwise permitted by law.

C. In cases in which a patient has not explicitly authorized his agent to make the health care decision at issue over the patient's later protest, a patient's agent or person authorized to make decisions pursuant to § 54.1-2986 may make a decision over the protest of a patient who is incapable of making an informed decision if:

1. The decision does not involve withholding or withdrawing life-prolonging procedures;

2. The decision does not involve (i) admission to a facility as defined in § 37.2-100 or (ii) treatment or care that is subject to regulations adopted pursuant to § 37.2-400;

3. The health care decision is based, to the extent known, on the patient's religious beliefs and basic values and on any preferences previously expressed by the patient in an advance directive or otherwise regarding such health care or, if they are unknown, is in the patient's best interests;

4. The health care that is to be provided, continued, withheld, or withdrawn has been determined and documented by the patient's attending physician to be medically appropriate and is otherwise permitted by

183 law; and

184 5. The health care that is to be provided, continued, withheld, or withdrawn has been affirmed and
185 documented as being ethically acceptable by the health care facility's patient care consulting committee, if
186 one exists, *pursuant to subdivision A 8 of § 54.1-2986* or otherwise by two physicians not currently involved
187 in the patient's care or in the determination of the patient's capacity to make health care decisions.

188 D. A patient's protest shall not revoke the patient's advance directive unless it meets the requirements of
189 § 54.1-2985.

190 E. If a patient protests the authority of a named agent or any person authorized to make health care
191 decisions by § 54.1-2986, except for the patient's guardian, the protested ~~individual~~ *person* shall have no
192 authority under this article to make health care decisions on his behalf unless the patient's advance directive
193 explicitly confers continuing authority on his agent, even over his later protest. If the protested ~~individual~~
194 *person* is denied authority under this subsection, authority to make health care decisions shall be determined
195 by any other provisions of the patient's advance directive, or in accordance with § 54.1-2986 or in accordance
196 with any other provision of law.