S.62

Introduced by Senators Ayer and Lyons

Referred to Committee on

Date:

Subject: Health; do-not-resuscitate orders; clinician orders for life-sustaining treatment; surrogate decision making

Statement of purpose of bill as introduced: 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 consent on behalf of a patient who lacks capacity for a do-not-resuscitate order or a clinician order for life-sustaining treatment.

An act relating to surrogate decision making for do-not-resuscitate orders and clinician orders for life-sustaining treatment

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

Sec. 1. 18 V.S.A. chapter 231 is amended to read:

CHAPTER 231. ADVANCE DIRECTIVES FOR

HEALTH CARE ~~AND~~, DISPOSITION OF REMAINS,

AND SURROGATE DECISION MAKING

§ 9700. PURPOSE AND POLICY

The ~~state~~ State of Vermont recognizes the fundamental right of an adult to determine the extent of health care the individual will receive, including treatment provided during periods of incapacity and at the end of life. This chapter enables adults to retain control over their own health care through the use of advance directives, including appointment of an agent and directions regarding health care and disposition of remains. During periods of incapacity, the decisions by the agent shall be based on the express instructions, wishes, or beliefs of the individual, to the extent those can be determined. This chapter also allows, in limited circumstances in which a patient without capacity has neither an agent nor a guardian, for a surrogate to provide consent on the patient's behalf for a do-not-resuscitate order or clinician order for life-sustaining treatment.

§ 9701. DEFINITIONS

As used in this chapter:

* * *

(17) "Informed consent" means the consent given voluntarily by an individual with capacity, on his or her own behalf or on behalf of another in the role of an agent, guardian, or surrogate, after being fully informed of the nature, benefits, risks, and consequences of the proposed health care, alternative health care, and no health care.

(18) "Interested individual" means:

(A) the principal's or patient's spouse, adult child, parent, adult sibling, adult grandchild, reciprocal beneficiary, or clergy person; or

(B) any adult who has exhibited special care and concern for the principal or patient and who is personally familiar with the principal's or patient's values.

(19) "Life sustaining treatment" means any medical intervention, including nutrition and hydration administered by medical means and antibiotics, which is intended to extend life and without which the principal or patient is likely to die.

* * *

(31) "DNR/COLST" means a do-not-resuscitate order (DNR) or a clinician order for life-sustaining treatment (COLST), or both.

(32) "Surrogate" means an interested individual who provides, pursuant to subchapter 2 of this chapter, informed consent for a do-not-resuscitate order or a clinician order for life-sustaining treatment.

(33) "Suspend" means to terminate the applicability of all or part of an advance directive for a specific period of time or while a specific condition exists.

~~(32)~~(34) "Patient representative" means the mental health patient representative established by section 7253 of this title.

Subchapter 1. Advance Directives and Disposition of Remains

§ 9702. ADVANCE DIRECTIVE

(a) An adult may do any or all of the following in an advance directive:

* * *

§ 9708. AUTHORITY AND OBLIGATIONS OF HEALTH CARE PROVIDERS, HEALTH CARE FACILITIES, AND RESIDENTIAL CARE FACILITIES REGARDING ~~DO-NOT-RESUSCITATE~~ DNR ORDERS AND ~~CLINICIAN ORDERS FOR LIFE-SUSTAINING TREATMENT~~ COLST

(a) ~~As used in this section, "DNR/COLST" shall mean a do-not-resuscitate order ("DNR") and a clinician order for life-sustaining treatment ("COLST") as defined in section 9701 of this title.~~ [Repealed.]

* * *

(d) A DNR order must:

(1) be signed by the patient's clinician;

(2) certify that the clinician has consulted, or made an effort to consult, with the patient, and the patient's agent or guardian, if there is an appointed agent or guardian;

(3) include either:

(A) the name of the patient; agent; guardian, in accordance with 14 V.S.A. § 3075(g); or ~~other individual~~ surrogate giving informed consent for the DNR and the individual's relationship to the patient; or

(B) certification that the patient's clinician and one other named clinician have determined that resuscitation would not prevent the imminent death of the patient, should the patient experience cardiopulmonary arrest; and

(4) if the patient is in a health care facility or a residential care facility, certify that the requirements of the facility's DNR protocol required by section 9709 of this title have been met.

(e) A COLST must:

(1) be signed by the patient's clinician; and

(2) include the name of the patient; agent; guardian, in accordance with 14 V.S.A. § 3075(g); or ~~other individual~~ surrogate giving informed consent for the COLST and the individual's relationship to the patient.

(f) ~~The Department of Health shall adopt by rule on or before July 1, 2016, criteria for individuals who are not the patient, agent, or guardian, but who are giving informed consent for a DNR/COLST order. The rules shall include the following:~~

~~(1) other individuals permitted to give informed consent for a DNR/COLST order who shall be a family member of the patient or a person with a known close relationship to the patient; and~~

~~(2) parameters for how decisions should be made, which shall include at a minimum the protection of a patient's own wishes in the same manner as in section 9711 of this title.~~ [Repealed.]

(g) A patient's clinician issuing a DNR/COLST order shall:

(1) place a copy of the completed DNR/COLST order in the patient's medical record; and

(2) provide instructions to the patient as to the appropriate means of displaying the DNR/COLST order.

(h) A clinician who issues a DNR order shall authorize issuance of a DNR identification to the patient. Uniform minimum requirements for DNR identification shall be determined ~~by rule~~ by the Department of Health ~~no later than July 1, 2014~~ by rule.

* * *

§ 9713. IMMUNITY

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

(b)(1) No health care provider, health care facility, residential care facility, or any other person acting for or under such person's control shall, if the

provider or facility has complied with the provisions of this chapter, be subject to civil or criminal liability for:

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

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

(2) ~~No~~ A funeral director, crematory operator, cemetery official, procurement organization, or any other person acting for or under such person's control, shall, if the director, operator, official, or organization has complied with the provisions of this chapter, not be subject to civil or criminal liability for providing or withholding its services in good faith pursuant to the provisions of an advance directive, whether or not the advance directive has been suspended or revoked.

(3) Nothing in this subsection shall be construed to establish immunity for the failure to follow standards of professional conduct and to exercise due care in the provision of services.

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

(1) ~~providing~~ Providing or withholding treatment or services in good faith pursuant to the direction of a principal or patient, the provisions of an advance directive, a DNR order, a COLST order, a DNR identification, the consent of the principal or patient with capacity or principal's or patient's agent ~~or~~, guardian, or surrogate, a decision or objection of a principal or patient, or the provisions of this chapter. This subdivision shall not be construed to establish a defense for the failure to follow standards of professional conduct and to exercise due care in the provision of services~~;~~.

(2) ~~relying~~ Relying on an amended, suspended, or revoked advance directive, unless the employee knew or should have known of the amendment, suspension, or revocation~~; or~~.

(3) ~~providing~~ Providing notice to the employer of a moral or other conflict pursuant to subdivision 9707(b)(3) of this title, so long as the employee has provided ongoing health care until a new employee or provider has been found to provide the services.

* * *

Subchapter 2. Surrogate Consent

§ 9731. INFORMED CONSENT BY SURROGATE FOR DNR/COLST ORDER

(a) One or more interested individuals may act as a surrogate for an adult without capacity in order to provide informed consent for a do-not-resuscitate order or clinician order for life-sustaining treatment pursuant to this subchapter.

(b) A surrogate may provide informed consent only if all of the following conditions are met:

(1) the patient has not appointed an agent through an advance directive;

(2) the patient has not indicated in an advance directive that the interested individual or individuals seeking to serve as surrogate should not be consulted on health care decisions or otherwise provided instructions in an advance directive contrary to allowing such individual or individuals to serve as surrogate;

(3) the patient does not have a guardian;

(4) the patient's clinician determines that the patient lacks capacity to provide informed consent; and

(5) the surrogate providing informed consent is identified on the DNR/COLST form.

(c)(1) A surrogate shall be an interested person who is designated by the patient by personally informing the patient's clinician.

(2) If the patient has not designated a surrogate pursuant to subdivision (1) of this subsection, or if the surrogate designated by the patient is not reasonably available or is unwilling to serve, then a surrogate shall be an interested person who is:

(A) a family member of the patient or a person with a known close relationship to the patient;

(B) willing to provide informed consent for a DNR/COLST order for the patient in accordance with the patient's known wishes and values; and

(C) willing and available to engage in consultation with the patient's clinician.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, an individual shall not serve as a surrogate over the patient's objection, even if the patient lacks capacity.

(d) In the event that more than one interested person seeks to serve as surrogate to provide informed consent on a patient's behalf, the patient's clinician, health care provider, or residential care provider may rely on the decision of one of the surrogates identified pursuant to this section as long as the clinician or provider documents in the patient's medical record that the surrogate has confirmed that one of the following circumstances applies:

(1) all surrogates agree on the decision to provide or withhold consent for a DNR/COLST order;

(2) all surrogates agree that this surrogate may make the decision regarding whether to provide or withhold consent for a DNR/COLST order; or

(3) the other surrogate or surrogates are not reasonably available.

(e) A surrogate providing informed consent for a DNR/COLST order shall use substituted judgment consistent with the patient's wishes and values and consistent with the parameters described in subsection 9711(d) of this title. The surrogate shall consult with the patient to the extent possible, and with the patient's clinician and any other appropriate health care providers and shall provide or withhold informed consent for a DNR/COLST order by attempting to determine what the patient would have wanted under the circumstances.

(f) The patient's clinician shall make reasonable efforts to inform the patient of any proposed treatment, or of any proposal to withhold or withdraw treatment, based on the surrogate's informed consent for a DNR/COLST order to provide, withhold, or withdraw such treatment.

(g) If the patient's clinician determines that the patient no longer lacks capacity and the DNR/COLST order was based on informed consent provided by a surrogate, the clinician shall seek the informed consent of the patient for any DNR/COLST order, which shall supersede the surrogate's consent.

(h) A surrogate shall have the same rights as a patient with capacity would have to the following, to the extent that it is related to providing or withholding informed consent for a DNR/COLST order:

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

(2) participate in any meetings, discussions, or conferences concerning health care decisions related to the patient;

(3) consent to the disclosure of health care information; and

(4) file a complaint on behalf of the patient regarding a health care provider, health care facility, or residential care facility.

Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.