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HOUSE BILL NO. 1090

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 3, 2000)

(Patron Prior to Substitute—Delegate Bryant)

A BILL to amend and reenact §§ 32.1-127, 32.1-127.1, 32.1-127.1:03, 32.1-287, 32.1-289, 32.1-290, 32.1-292.1, 46.2-342, 54.1-2984, and 54.1-2986 of the Code of Virginia, relating to organ donations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-127, 32.1-127.1, 32.1-127.1:03, 32.1-287, 32.1-289, 32.1-290, 32.1-292.1, 46.2-342, 54.1-2984, and 54.1-2986 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-127. Regulations.

A. The regulations promulgated by the Board to carry out the provisions of this article shall be in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals and by specialists in matters of public health and safety, including health and safety standards established under provisions of Title XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.) of this chapter.

B. Such regulations:

1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing homes and certified nursing facilities to assure the environmental protection and the life safety of its patients and employees and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and certified nursing facilities, except those professionals licensed or certified by the Department of Health Professions; and (iv) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence;

2. Shall provide that at least one physician who is licensed to practice medicine in this Commonwealth shall be on call at all times, though not necessarily physically present on the premises, at each hospital which operates or holds itself out as operating an emergency service;

3. May classify hospitals and nursing homes by type of specialty or service and may provide for licensing hospitals and nursing homes by bed capacity and by type of specialty or service;

4. Shall also require that each hospital establish a *protocol for organ donation, in compliance with federal law and the regulations of the Health Care Financing Administration (HCFA), particularly 42 CFR § 482.45. Each hospital shall have an agreement with an organ procurement organization designated in HCFA regulations for routine contact protocol which ensures that contact, whereby the provider's designated organ procurement organization certified by HCFA (i) is notified in a timely manner of all deaths or imminent deaths of patients in the hospital; and (ii) is authorized to determine the suitability of the decedent or patient for organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital collaborates with the designated organ procurement organization to inform the family of each potential donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual making contact with the family shall have completed a course in the methodology for approaching potential donor families and requesting organ or tissue donation that (i) is offered or approved by the organ procurement organization and designed in conjunction with the tissue and eye bank community, and (ii) encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement organization in educating the staff responsible for contacting the organ procurement organization's personnel on donation issues, the proper review of death records to improve identification of potential donors, and the proper procedures for maintaining potential donors while necessary testing and placement of potential donated organs, tissues, and eyes takes place. This process shall be followed, without exception, unless the families of suitable organ and tissue donors are offered the opportunity by the relevant decedent or patient has expressed opposition to organ donation, the chief administrative officer of the hospital or his designee to consider organ, tissue and eye donation knows of such opposition, and no donor card or other relevant document, such as an advance directive, can be found;*

5. Shall require that each hospital that provides obstetrical services establish a protocol for admission

60 or transfer of any pregnant woman who presents herself while in labor;

61 6. Shall also require that each licensed hospital develop and implement a protocol requiring written
62 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall
63 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother
64 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,
65 treatment services, comprehensive early intervention services for infants and toddlers with disabilities
66 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.
67 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to
68 the extent possible, the father of the infant and any members of the patient's extended family who may
69 participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant
70 to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to
71 federal law restrictions, the community services board of the jurisdiction in which the woman resides to
72 appoint a discharge plan manager. The community services board shall implement and manage the
73 discharge plan;

74 7. Shall require that each nursing home and certified nursing facility fully disclose to the applicant
75 for admission the home's or facility's admissions policies, including any preferences given;

76 8. Shall require that each licensed hospital establish a protocol relating to the rights and
77 responsibilities of patients which shall include a process reasonably designed to inform patients of such
78 rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to
79 patients on admission, shall be based on Joint Commission on Accreditation of Healthcare Organizations'
80 standards; and

81 9. Shall establish standards and maintain a process for designation of levels or categories of care in
82 neonatal services according to an applicable national or state-developed evaluation system. Such
83 standards may be differentiated for various levels or categories of care and may include, but need not be
84 limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols.

85 C. Upon obtaining the appropriate license, if applicable, licensed hospitals, nursing homes, and
86 certified nursing facilities may operate adult day care centers.

87 D. All facilities licensed by the Board pursuant to this article which provide treatment or care for
88 hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot
89 numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to
90 be contaminated with an infectious agent, those hemophiliacs who have received units of this
91 contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot
92 which is known to be contaminated shall notify the recipient's attending physician and request that he
93 notify the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail,
94 return receipt requested, each recipient who received treatment from a known contaminated lot at the
95 individual's last known address.

96 § 32.1-127.1. Immunity from liability for routine contact for organ and tissue donation.

97 Any chief administrative officer of a hospital or his designee who ~~performs~~ *administers* the routine
98 ~~contact~~ *referral* required by § 32.1-127 and any representative of any organ procurement organization or
99 eye or tissue bank who ~~requests~~ *determines the suitability*
100 *of the decedent or patient for organ donation, makes contact with the family of a decedent or patient to*
101 *request* the donation of organs, tissues or eyes, or assists or performs the removal of any donated
102 organs, tissues or eyes shall be immune from civil liability for any act, decision, or omission or
103 statement made in accordance with the provisions of § 32.1-127 ~~and~~ the regulations of the Board, *and*
104 *the provisions of the Health Care Financing Administration's regulations on routine referral and organ*
105 *donation*, unless he was grossly negligent or acted in bad faith or with malicious intent.

106 § 32.1-127.1:03. Patient health records privacy.

107 A. There is hereby recognized a patient's right of privacy in the content of a patient's medical record.
108 Patient records are the property of the provider maintaining them, and, except when permitted by this
109 section or by another provision of state or federal law, no provider, or other person working in a health
110 care setting, may disclose the records of a patient.

111 Patient records shall not be removed from the premises where they are maintained without the
112 approval of the provider, except in accordance with a court order or subpoena consistent with § 8.01-413
113 C or with this section or in accordance with the regulations relating to change of ownership of patient
114 records promulgated by a health regulatory board established in Title 54.1.

115 No person to whom disclosure of patient records was made by a patient or a provider shall redisclose
116 or otherwise reveal the records of a patient, beyond the purpose for which such disclosure was made,
117 without first obtaining the patient's specific consent to such redisclosure. This redisclosure prohibition
118 shall not, however, prevent (i) any provider who receives records from another provider from making
119 subsequent disclosures as permitted under this section or (ii) any provider from furnishing records and
120 aggregate or other data, from which patient-identifying prescription information has been removed,
121 encoded or encrypted, to qualified researchers, including, but not limited to, pharmaceutical

manufacturers and their agents or contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health services research.

B. As used in this section:

"Agent" means a person who has been appointed as a patient's agent under a power of attorney for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Guardian" means a court-appointed guardian of the person.

"Health services" includes, but is not limited to, examination, diagnosis, evaluation, treatment, pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind.

"Parent" means a biological, adoptive or foster parent.

"Patient" means a person who is receiving or has received health services from a provider.

"Patient-identifying prescription information" means all prescriptions, drug orders or any other prescription information that specifically identifies an individual patient.

"Provider" shall have the same meaning as set forth in the definition of "health care provider" in § 8.01-581.1, except that state-operated facilities shall also be considered providers for the purposes of this section. Provider shall also include all persons who are licensed, certified, registered or permitted by any of the health regulatory boards within the Department of Health Professions, except persons regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Record" means any written, printed or electronically recorded material maintained by a provider in the course of providing health services to a patient concerning the patient and the services provided. "Record" also includes the substance of any communication made by a patient to a provider in confidence during or in connection with the provision of health services to a patient or information otherwise acquired by the provider about a patient in confidence and in connection with the provision of health services to the patient.

C. The provisions of this section shall not apply to any of the following:

1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia Workers' Compensation Act; or

2. Except where specifically provided herein, the records of minor patients.

D. Providers may disclose the records of a patient:

1. As set forth in subsection E of this section, pursuant to the written consent of the patient or in the case of a minor patient, his custodial parent, guardian or other person authorized to consent to treatment of minors pursuant to § 54.1-2969; also, in emergency cases or situations where it is impractical to obtain the patient's written consent, pursuant to the patient's oral consent for a provider to discuss the patient's records with a third party specified by the patient;

2. In compliance with a subpoena issued in accord with subsection H of this section, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413;

3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure is reasonably necessary to establish or collect a fee or to defend a provider or the provider's employees or staff against any accusation of wrongful conduct; also as required in the course of an investigation, audit, review or proceedings regarding a provider's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity;

4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

5. In compliance with the provisions of § 8.01-413;

6. As required or authorized by any other provision of law including contagious disease, public safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-276.5, 32.1-283, 32.1-283.1, 37.1-98.2, 53.1-40.10, 54.1-2403.3, 54.1-2906, 54.1-2907, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.1-55.3 and 63.1-248.11;

7. Where necessary in connection with the care of the patient, *including in the implementation of a hospital routine contact process*;

8. In the normal course of business in accordance with accepted standards of practice within the health services setting; however, the maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412;

9. When the patient has waived his right to the privacy of the medical records;

10. When examination and evaluation of a patient are undertaken pursuant to judicial or administrative law order, but only to the extent as required by such;

11. To the guardian ad litem in the course of a guardianship proceeding of an adult patient authorized under §§ 37.1-128.1, 37.1-128.2 and 37.1-132;

12. To the attorney appointed by the court to represent a patient in a civil commitment proceeding under § 37.1-67.3;

183 13. To the attorney and/or guardian ad litem of a minor patient who represents such minor in any
184 judicial or administrative proceeding, provided that the court or administrative hearing officer has
185 entered an order granting the attorney or guardian ad litem this right and such attorney or guardian ad
186 litem presents evidence to the provider of such order;

187 14. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's records in
188 accord with § 9-173.12;

189 15. To an agent appointed under a patient's power of attorney or to an agent or decision maker
190 designated in a patient's advance directive for health care *or for decisions on anatomical gifts and*
191 *organ, tissue or eye donation* or to any other person consistent with the provisions of the Health Care
192 Decisions Act (§ 54.1-2981 et seq.);

193 16. To third-party payors and their agents for purposes of reimbursement;

194 17. As is necessary to support an application for receipt of health care benefits from a governmental
195 agency or as required by an authorized governmental agency reviewing such application or reviewing
196 benefits already provided;

197 18. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership
198 or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

199 19. In accord with § 54.1-2400.1 B, to communicate a patient's specific and immediate threat to
200 cause serious bodily injury or death of an identified or readily identifiable person;

201 20. To the patient, except as provided in subsections E and F of this section and subsection B of
202 § 8.01-413;

203 21. In the case of substance abuse records, when permitted by and in conformity with requirements
204 of federal law found in 42 U.S.C. 290dd-2 and 42 C.F.R. Part 2;

205 22. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the
206 adequacy or quality of professional services or the competency and qualifications for professional staff
207 privileges;

208 23. If the records are those of a deceased or mentally incapacitated patient to the personal
209 representative or executor of the deceased patient or the legal guardian or committee of the incompetent
210 or incapacitated patient or if there is no personal representative, executor, legal guardian or committee
211 appointed, to the following persons in the following order of priority: a spouse, an adult son or
212 daughter, either parent, an adult brother or sister, or any other relative of the deceased patient in order
213 of blood relationship; and

214 24. For the purpose of conducting record reviews of inpatient hospital deaths to promote
215 identification of all potential organ, eye, and tissue donors in conformance with the requirements of
216 applicable federal law and regulations, including 42 C. F.R. § 482.45, (i) to the provider's designated
217 organ procurement organization certified by the United States Health Care Financing Administration and
218 (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the
219 American Association of Tissue Banks.

220 E. Requests for copies of medical records shall (i) be in writing, dated and signed by the requester;
221 (ii) identify the nature of the information requested; and (iii) include evidence of the authority of the
222 requester to receive such copies and identification of the person to whom the information is to be
223 disclosed. Within fifteen days of receipt of a request for copies of medical records, the provider shall do
224 one of the following: (i) furnish such copies to any requester authorized to receive them; (ii) inform the
225 requester if the information does not exist or cannot be found; (iii) if the provider does not maintain a
226 record of the information, so inform the requester and provide the name and address, if known, of the
227 provider who maintains the record; or (iv) deny the request (a) under subsection F, (b) on the grounds
228 that the requester has not established his authority to receive such records or proof of his identity, or (c)
229 as otherwise provided by law. Procedures set forth in this section shall apply only to requests for
230 records not specifically governed by other provisions of this Code, federal law or state or federal
231 regulation.

232 F. Except as provided in subsection B of § 8.01-413, copies of a patient's records shall not be
233 furnished to such patient or anyone authorized to act on the patient's behalf where the patient's attending
234 physician or the patient's clinical psychologist has made a part of the patient's record a written statement
235 that, in his opinion, the furnishing to or review by the patient of such records would be injurious to the
236 patient's health or well-being. If any custodian of medical records denies a request for copies of records
237 based on such statement, the custodian shall permit examination and copying of the medical record by
238 another such physician or clinical psychologist selected by the patient, whose licensure, training and
239 experience relative to the patient's condition are at least equivalent to that of the physician or clinical
240 psychologist upon whose opinion the denial is based. The person or entity denying the request shall
241 inform the patient of the patient's right to select another reviewing physician or clinical psychologist
242 under this subsection who shall make a judgment as to whether to make the record available to the
243 patient. Any record copied for review by the physician or clinical psychologist selected by the patient
244 shall be accompanied by a statement from the custodian of the record that the patient's attending

physician or clinical psychologist determined that the patient's review of his record would be injurious to the patient's health or well-being.

G. A written consent to allow release of patient records may, but need not, be in the following form:

CONSENT TO RELEASE OF CONFIDENTIAL HEALTH CARE INFORMATION

Patient Name

Provider Name

Person, agency or provider to whom disclosure is to be made

Information or Records to be disclosed

As the person signing this consent, I understand that I am giving my permission to the above-named provider or other named third party for disclosure of confidential health care records. I also understand that I have the right to revoke this consent, but that my revocation is not effective until delivered in writing to the person who is in possession of my records. A copy of this consent and a notation concerning the persons or agencies to whom disclosure was made shall be included with my original records. The person who receives the records to which this consent pertains may not redisclose them to anyone else without my separate written consent unless such recipient is a provider who makes a disclosure permitted by law.

This consent expires on (date)

Signature of Patient Date

H. 1. No party to an action shall request the issuance of a subpoena duces tecum for an opposing party's medical records unless a copy of the request for the subpoena is provided to opposing counsel or the opposing party if they are pro se, simultaneously with filing the request. No party to an action shall request the issuance of a subpoena duces tecum for the medical records of a nonparty witness unless a copy of the request for the subpoena is provided to the nonparty witness simultaneously with filing the request.

In instances where medical records being subpoenaed are those of a pro se party or nonparty witness, the party requesting the issuance of the subpoena shall deliver to the pro se party or nonparty witness together with the copy of the request for subpoena, a statement informing them of their rights and remedies. The statement shall include the following language and the heading shall be in boldface capital letters:

NOTICE TO PATIENT

The attached Request for Subpoena means that (insert name of party requesting subpoena) has asked the court to issue a subpoena to your doctor or other health care providers (names of health care providers inserted here) requiring them to produce your medical records. Your doctor or other health care provider is required to respond by providing a copy of your medical records. If you believe your records should not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the court to quash the subpoena. You may contact the clerk's office to determine the requirements that must be satisfied when filing a motion to quash and you may elect to contact an attorney to represent your interest. If you elect to file a motion to quash, it must be filed as soon as possible before the provider sends out the records in response to the subpoena. If you elect to file a motion to quash, you must notify your doctor or other health care provider(s) that you are filing the motion so that the provider knows to send the records to the clerk of court in a sealed envelope or package for safekeeping while your motion is decided.

2. Any party filing a request for a subpoena duces tecum for a patient's medical records shall include a Notice to Providers in the same part of the request where the provider is directed where and when to return the records. Such notice shall be in boldface capital letters and shall include the following language:

NOTICE TO PROVIDERS

IF YOU RECEIVE NOTICE THAT YOUR PATIENT HAS FILED A MOTION TO QUASH (OBJECTING TO) THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, SEND THE RECORDS ONLY TO THE CLERK OF THE COURT WHICH ISSUED THE SUBPOENA USING THE FOLLOWING PROCEDURE: PLACE THE RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED ENVELOPE A COVER LETTER TO THE CLERK OF COURT WHICH STATES THAT CONFIDENTIAL HEALTH CARE RECORDS ARE ENCLOSED AND ARE TO BE HELD UNDER SEAL PENDING THE COURT'S RULING ON THE MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT.

3. Health care providers shall provide a copy of all records as required by a subpoena duces tecum or court order for such medical records. If the health care provider has, however, actual receipt of notice that a motion to quash the subpoena has been filed or if the health care provider files a motion to quash

the subpoena for medical records, then the health care provider shall produce the records to the clerk of the court issuing the subpoena, where the court shall place the records under seal until a determination is made regarding the motion to quash. The securely sealed envelope shall only be opened on order of the judge. In the event the court grants the motion to quash, the records shall be returned to the health care provider in the same sealed envelope in which they were delivered to the court. In the event that a judge orders the sealed envelope to be opened to review the records in camera, a copy of the judge's order shall accompany any records returned to the provider. The records returned to the provider shall be in a securely sealed envelope.

4. It is the duty of any party requesting a subpoena duces tecum for medical records to determine whether the patient whose records are sought is pro se or a nonparty. Any request for a subpoena duces tecum for the medical records of a nonparty or of a pro se party shall direct the provider (in boldface type) not to produce the records until ten days after the date on which the provider is served with the subpoena duces tecum and shall be produced no later than twenty days after the date of such service.

In the event that the individual whose records are being sought files a motion to quash the subpoena, the court shall decide whether good cause has been shown by the discovering party to compel disclosure of the patient's private records over the patient's objections. In determining whether good cause has been shown, the court shall consider (i) the particular purpose for which the information was collected; (ii) the degree to which the disclosure of the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or proceeding; and (v) any other relevant factor.

The provisions of this subsection have no application to subpoenas for medical records requested under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or proceedings regarding a provider's conduct. The provisions of this subsection apply to the medical records of both minors and adults.

A subpoena for substance abuse records must conform to the requirements of federal law found in 42 C.F.R. Part 2, Subpart E.

Providers may testify about the medical records of a patient in compliance with §§ 8.01-399 and 8.01-400.2.

§ 32.1-287. Authority of Chief Medical Examiner or deputies to provide organs, tissues and pituitary glands for transplant or therapy; immunity from liability for nonnegligent compliance.

~~Provided~~ Upon consent ~~has been~~ *being* obtained, the Chief Medical Examiner or any of his assistant chief medical examiners may provide such body organ, gland, eye or other tissue to the transplanting surgeon or the physician prescribing therapy or the appropriate tissue, organ or eye bank operating in accordance with the laws of Virginia if providing such body organ, gland, eye, or other tissue will not interfere with the subsequent course of the investigation or autopsy ~~or after the postmortem facial appearance of the deceased.~~

However, if no consent has been obtained by the person or institution having first or original custody of the dead body because the next of kin cannot be contacted as provided in § 32.1-283, then the Chief Medical Examiner or an assistant chief medical examiner may remove and preserve the pituitary gland. If consent has not been obtained before the body is removed from custody of the Chief Medical Examiner or an assistant chief medical examiner then the pituitary gland shall be replaced.

There shall be no civil or criminal liability on the part of, and no cause of action for damages shall arise against, the Chief Medical Examiner or an assistant chief medical examiner for nonnegligent compliance with the provisions of this section.

Nothing herein shall be construed to interfere with the autopsy procedure or with the routine *contact with the decedent's family and the* obtaining of consent for removal of organs ~~as conducted by surgical teams or others in compliance with § 32.1-127.~~

§ 32.1-289. Definitions.

As used in this article:

"Anatomical gift" or "organ donation" means a donation of *organs, tissues, or eyes* or all ~~or part~~ of a human body to take effect upon or after death.

"Decedent" means a deceased individual and includes a stillborn infant or fetus.

"Document of gift" means a card, a statement attached to or imprinted on a motor vehicle driver's or chauffeur's license *or the record of the individual's motor vehicle driver's or chauffeur's license*, a will, *an advance directive*, or other writing used to make an *organ donation or an anatomical gift*.

"Donor" means an individual who makes *a donation of organs, tissues, or eyes* or an anatomical gift of all ~~or part~~ of his body.

"Eye Bank" means an agency certified by the Eye Bank Association of America operating in this Commonwealth.

"Hospital" means a facility licensed, accredited or approved as a hospital under the laws of any state *or certified by the Health Care Financing Administration*, and a hospital operated by the United States government, a state, or a subdivision thereof which is not required to be licensed under state laws.

"Organ procurement organization" means an agency certified by the United States Health Care Financing Administration as an organ procurement organization.

"Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

"Person" includes, in addition to the entities enumerated in § 32.1-3, a government and a governmental subdivision or agency.

"Physician" or "surgeon" means an individual licensed or otherwise authorized to practice under the laws of any state.

"Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

"State" means any state, district, commonwealth, territory, insular possession, or other area subject to the legislative authority of the United States of America.

"Tissue Bank" means an agency certified by the American Association of Tissue Banks operating in this Commonwealth.

§ 32.1-290. Persons who may execute anatomical gift or make organ donations; when gift may be executed; examination of body authorized; rights of donee paramount.

A. Any ~~competent individual of sound mind~~ who is at least eighteen years of age or individual under eighteen who *is of sound mind and* has the written consent of his parent or legal guardian may (i) make an anatomical gift ~~for any purposes specified in § 32.1-291~~ or organ, tissue or eye donation, (ii) limit an anatomical gift ~~to one or more of those purposes or any organ, tissue or eye donation~~ or (iii) refuse to make an anatomical gift ~~except that~~ or organ, tissue or eye donation; however, individuals under eighteen ~~make such a refusal may refuse~~ without the written consent of their parent or legal guardian.

B. An anatomical gift ~~or organ, tissue or eye donation~~ by a donor may be made by a document of gift signed by the donor and execution of a document of gift as authorized by this section shall be sufficient to effect such a gift. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other, and state that it has been so signed.

~~An anatomical gift~~ *Organ, tissues, and eye donations* may also be made by a donor in accordance with the procedures established by the Department of Motor Vehicles, pursuant to § 46.2-342, *and in an advance directive as provided in the Health Care Decisions Act (§ 54.1-2981 et seq.)*. Revocation, suspension, expiration or cancellation of the donor's driver's license shall not affect the anatomical gift ~~or organ, tissue or eye donation~~.

C. A document of gift may designate a ~~physician or surgeon who specializes in organ procurement or organ transplantation~~ *named individual*, or a Health Care Finance Administration federally designated organ procurement organization named in a memorandum of understanding with the hospital. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift ~~or organ, tissue or eye donation~~ may employ or authorize any physician or surgeon, and, in the case of a gift of the eyes, ~~any funeral service licensee or embalmer licensed in this Commonwealth or any technician~~ *any technician or funeral service licensee or embalmer licensed in this Commonwealth* who can document the successful completion of a course provided by any eye bank in this Commonwealth which is accredited by the Eye Bank Association of America or the American Association of Tissue Banks.

In the case of a gift of skin, temporal bone or other bone, in the absence of a designation by the donor or if such designee is not available, the donee or other person authorized to accept the gift may employ or authorize to perform the appropriate procedures: (i) any physician or surgeon or (ii) any technician approved by the Life Net as qualified to perform the act of skin or bone harvesting.

In the case of a gift of the brain to be used for confirmation of diagnosis and research into the etiology of any organic brain disease, the donee or other person authorized to receive the organ may employ or authorize a laboratory technician trained by a licensed neuropathologist to recover the brain.

Any person authorized by this section to perform eye enucleation, or recovery of skin, temporal bone and other bone or tissue or vascular organs may draw blood from the donor and order such tests as may be appropriate to protect his health and the health of the potential recipients of the tissues or organs.

A surgeon, physician, *organ procurement organization employee*, funeral service licensee, embalmer, technician or ophthalmic assistant acting in accordance with the terms of this section shall not have any liability, civil or criminal, for ~~the~~ eye enucleation, recovery of the brain or other organ or harvesting of skin or bones *upon a decedent*.

D. An anatomical gift ~~or organ, tissue or eye donation~~ by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift ~~is unaffected~~ *or organ, tissue or eye donation shall remain valid, and no person shall refuse to comply with such gift or donation*. The donor of an anatomical gift ~~or organ, tissue or eye donation~~ made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in this section.

429 E. *An anatomical gift or organ, tissue or eye donation, regardless of the document making such gift*
430 *or donation, that is not revoked by the donor before death is irrevocable and does not require the*
431 *consent or concurrence of any person after the donor's death for the eye enucleation, recovery of the*
432 *brain or other organ or harvesting of skin or bones of the donor.*

433 A donor may amend or revoke an anatomical gift *or donor document*, not made by will, only by (i)
434 a signed statement, (ii) an oral statement made in the presence of two individuals, (iii) any form of
435 communication during a terminal illness or injury ~~addressed to a physician or surgeon or~~, (iv) the
436 delivery of a signed statement to a specified donee to whom a document of gift has been delivered, *or*
437 *(v) compliance with the relevant law, e.g., the Uniform Donor Document pursuant to § 46.2-342 or the*
438 *Health Care Decisions Act (§ 54.1-2981 et seq.).*

439 ~~An anatomical gift that is not revoked by the donor before death is irrevocable and does not require~~
440 ~~the consent or concurrence of any person after the donor's death.~~

441 F. An individual may refuse to make an anatomical gift of the individual's body or ~~part~~ *organ, tissue*
442 *or eye donation* by (i) a writing signed in the same manner as a document of gift, (ii) a statement
443 attached to a driver's license or driver's record, or (iii) any other writing used to identify the individual
444 as refusing to make an anatomical gift *or organ, tissue or eye donation*. During a terminal illness or
445 injury, the refusal may be an oral statement or other form of communication.

446 G. In the absence of contrary indications by the donor, (i) an anatomical gift of a ~~part~~ *a specific*
447 *organ donation* is neither a refusal to give other ~~parts~~ *organs, tissues, or the eyes* nor a limitation on an
448 anatomical gift *or organ, tissue or eye donation* under § 32.1-290.1 or on ~~a~~ *the* removal or release of
449 other ~~parts~~ *organs, tissues or the eyes* under § 32.1-290.1 and (ii) a revocation or amendment of an
450 anatomical gift *or organ, tissue or eye donation* is not a refusal to make another anatomical gift *or*
451 *organ, tissue or eye donation*. If the donor intends a revocation to be a refusal to make an anatomical
452 gift *or organ, tissue or eye donation in the future*, the donor shall make the refusal pursuant to
453 subsection F.

454 § 32.1-292.1. Routine search for donor information; organ procurement agencies to file protocols.

455 A. The following persons may make a reasonable search for a document of gift or other information
456 identifying the bearer as a donor or as an individual who has refused to make an anatomical gift *or*
457 *organ, tissue or eye donation*:

458 1. A law-enforcement officer, fireman, paramedic or other emergency rescuer finding an individual
459 who the searcher believes is dead; and

460 2. A hospital, upon the admission of an individual at or near the time of death, if there is not
461 immediately available any other source of that information, *in accordance with the protocol required by*
462 *§ 32.1-127.*

463 ~~Each licensed hospital shall establish an organ procurement for transplant protocol as required by~~
464 ~~regulations of the Board adopted pursuant to § 32.1-127.~~

465 B. Any law-enforcement officer may conduct an administrative search of the subject's Department of
466 Motor Vehicles driver record to determine the person's authorization for organ donation or refusal of
467 organ donation. A physical search pursuant to subsection A may be conducted at or near the time of
468 death or hospital admission and shall be limited to those personal effects of the subject where a driver's
469 license may be reasonably stored. Any information, document, tangible objects or other items discovered
470 during such search shall be used solely for the purpose of ascertaining whether the subject intends to
471 make an anatomical gift *or organ, tissue or eye donation*, and in no event shall any such discovered
472 material be admissible in any subsequent criminal or civil proceeding.

473 § 46.2-342. What license to contain; organ donor information; Uniform Donor Document.

474 A. Every license issued under this chapter shall bear:

475 1. For new, renewal, or replacement licenses issued on or after September 1, 1995, either (i) a
476 license number which shall be the same as the licensee's social security number or (ii) a control number
477 which shall be assigned by the Department to the licensee if he either (i) has no social security number
478 or (ii) requests in writing on a form prescribed by the Commissioner that his social security number not
479 be shown on the license;

480 2. A color photograph of the licensee;

481 3. The licensee's name, year, month, and date of birth;

482 4. The licensee's address;

483 5. A brief description of the licensee for the purpose of identification;

484 6. A space for the signature of the licensee; and

485 7. Any other information deemed necessary by the Commissioner for the administration of this title.

486 No abbreviated names or nicknames shall be shown on any license.

487 A1. At the option of the licensee, the address shown on the license may be either the post office
488 box, business, or residence address of the licensee. However, regardless of which address is shown on
489 the license, the licensee shall supply the Department with his residence address. This residence address
490 shall be maintained in the Department's records. Whenever the licensee's address shown either on his

license or in the Department's records changes, he shall notify the Department of such change as required by § 46.2-324.

B. The license shall be made of a material and in a form to be determined by the Commissioner.

C. Licenses issued to persons less than twenty-one years old shall be immediately and readily distinguishable from those issued to persons twenty-one years old or older. Distinguishing characteristics shall include unique design elements of the document and descriptors within the photograph area to identify persons who are at least fifteen years old but less than twenty-one years old. These descriptors shall include the month, day, and year when the person will become twenty-one years old.

D. The Department shall establish a method by which an applicant for a driver's license or an identification card may designate his willingness to be an organ donor as provided in Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1 and shall cooperate with the Virginia Transplant Council to ensure that such method is designed to encourage organ donation with a minimum of effort on the part of the donor and the Department.

E. If an applicant designates his willingness to be a donor pursuant to subsection D, the Department may make a notation of this designation on his license or card and shall make a notation of this designation in his driver record.

F. The donor designation authorized in subsection E shall be sufficient legal authority for the removal, following death, of the subject's organs or tissues without additional authority from the donor, or his family or estate. *No family member, guardian, agent named pursuant to an advance directive or person responsible for the decedent's estate shall refuse to honor the donor designation or, in any way, seek to avoid honoring the donor designation.*

G. The donor designation provided pursuant to subsection D may only be rescinded by appearing in person at a Department branch office. The Department shall notify the prospective donor of this requirement at the time he authorizes donor designation.

H. With the written consent of his parent or legal guardian, a minor may make a donor designation.

I. When requested by the applicant, and upon presentation of a signed statement by a licensed physician confirming the applicant's condition, the Department shall indicate on the applicant's driver's license that the applicant is an insulin-dependent diabetic.

J. In the absence of gross negligence or willful misconduct, the Department and its employees shall be immune from any civil or criminal liability in connection with the making of or failure to make a notation of donor designation on any license or card or in any person's driver record.

K. Notwithstanding the foregoing provisions of this section, the Department shall continue to use the uniform donor document, as formerly set forth in subsection D above, for organ donation designation until such time as a new method is fully implemented, which shall be no later than July 1, 1994. Any such uniform donor document, shall, when properly executed, remain valid and shall continue to be subject to all conditions for execution, delivery, amendment, and revocation as set out in Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1.

L. The Department shall, in coordination with the Virginia Transplant Council, prepare an organ donor information brochure describing the organ donor program and providing instructions for completion of the uniform donor document and include a copy of such brochure with every driver's license renewal notice or application mailed to licensed drivers in Virginia.

§ 54.1-2984. Suggested form of written advance directives.

An advance directive executed pursuant to this article may, but need not, be in the following form, and may (i) direct a specific procedure or treatment to be provided, such as artificially administered hydration and nutrition; (ii) direct a specific procedure or treatment to be withheld; or (iii) appoint an agent to make health care decisions for the declarant as specified in the advance directive if the declarant is determined to be incapable of making an informed decision, including the decision to make, after the declarant's death, an anatomical gift of all ~~or any part~~ of the declarant's body *or an organ, tissue or eye donation* pursuant to Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1 and in compliance with any directions of the declarant. Should any other specific directions be held to be invalid, such invalidity shall not affect the advance directive. If the declarant appoints an agent in an advance directive, that agent shall have the authority to make health care decisions for the declarant as specified in the advance directive if the declarant is determined to be incapable of making an informed decision and shall have decision-making priority over any individuals authorized under § 54.1-2986 to make health care decisions for the declarant. *In no case shall the agent refuse or fail to honor the declarant's wishes in relation to anatomical gifts or organ, tissue or eye donation.*

ADVANCE MEDICAL DIRECTIVE

I,, willfully and voluntarily make known my desire and do hereby declare:

If at any time my attending physician should determine that I have a terminal condition where the application of life-prolonging procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only

552 the administration of medication or the performance of any medical procedure deemed necessary to
553 provide me with comfort care or to alleviate pain (OPTION: I specifically direct that the following
554 procedures or treatments be provided to me:)

555 In the absence of my ability to give directions regarding the use of such life-prolonging procedures,
556 it is my intention that this advance directive shall be honored by my family and physician as the final
557 expression of my legal right to refuse medical or surgical treatment and accept the consequences of such
558 refusal.

559 OPTION: APPOINTMENT OF AGENT (CROSS THROUGH IF YOU DO NOT WANT TO
560 APPOINT AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.)

561 I hereby appoint (primary agent), of (address and telephone number), as my agent to make
562 health care decisions on my behalf as authorized in this document. If (primary agent) is not
563 reasonably available or is unable or unwilling to act as my agent, then I appoint ... (successor agent), of
564 (address and telephone number), to serve in that capacity.

565 I hereby grant to my agent, named above, full power and authority to make health care decisions on
566 my behalf as described below whenever I have been determined to be incapable of making an informed
567 decision about providing, withholding or withdrawing medical treatment. The phrase "incapable of
568 making an informed decision" means unable to understand the nature, extent and probable consequences
569 of a proposed medical decision or unable to make a rational evaluation of the risks and benefits of a
570 proposed medical decision as compared with the risks and benefits of alternatives to that decision, or
571 unable to communicate such understanding in any way. My agent's authority hereunder is effective as
572 long as I am incapable of making an informed decision.

573 The determination that I am incapable of making an informed decision shall be made by my
574 attending physician and a second physician or licensed clinical psychologist after a personal examination
575 of me and shall be certified in writing. Such certification shall be required before treatment is withheld
576 or withdrawn, and before, or as soon as reasonably practicable after, treatment is provided, and every
577 180 days thereafter while the treatment continues.

578 In exercising the power to make health care decisions on my behalf, my agent shall follow my
579 desires and preferences as stated in this document or as otherwise known to my agent. My agent shall
580 be guided by my medical diagnosis and prognosis and any information provided by my physicians as to
581 the intrusiveness, pain, risks, and side effects associated with treatment or nontreatment. My agent shall
582 not authorize a course of treatment which he knows, or upon reasonable inquiry ought to know, is
583 contrary to my religious beliefs or my basic values, whether expressed orally or in writing. If my agent
584 cannot determine what treatment choice I would have made on my own behalf, then my agent shall
585 make a choice for me based upon what he believes to be in my best interests.

586 OPTION: POWERS OF MY AGENT (CROSS THROUGH ANY LANGUAGE YOU DO NOT
587 WANT AND ADD ANY LANGUAGE YOU DO WANT.)

588 The powers of my agent shall include the following:

589 A. To consent to or refuse or withdraw consent to any type of medical care, treatment, surgical
590 procedure, diagnostic procedure, medication and the use of mechanical or other procedures that affect
591 any bodily function, including, but not limited to, artificial respiration, artificially administered nutrition
592 and hydration, and cardiopulmonary resuscitation. This authorization specifically includes the power to
593 consent to the administration of dosages of pain-relieving medication in excess of recommended dosages
594 in an amount sufficient to relieve pain, even if such medication carries the risk of addiction or
595 inadvertently hastens my death;

596 B. To request, receive, and review any information, verbal or written, regarding my physical or
597 mental health, including but not limited to, medical and hospital records, and to consent to the
598 disclosure of this information;

599 C. To employ and discharge my health care providers;

600 D. To authorize my admission to or discharge (including transfer to another facility) from any
601 hospital, hospice, nursing home, adult home or other medical care facility for services other than those
602 for treatment of mental illness requiring admission procedures provided in Article 1 (§ 37.1-63 et seq.)
603 of Chapter 2 of Title 37.1; and

604 E. To take any lawful actions that may be necessary to carry out these decisions, including the
605 granting of releases of liability to medical providers.

606 Further, my agent shall not be liable for the costs of treatment pursuant to his authorization, based
607 solely on that authorization.

608 OPTION: APPOINTMENT OF AN AGENT TO MAKE AN ANATOMICAL GIFT *OR ORGAN,*
609 *TISSUE OR EYE DONATION* (CROSS THROUGH IF YOU DO NOT WANT TO APPOINT AN
610 AGENT TO MAKE AN ANATOMICAL GIFT *OR ANY ORGAN, TISSUE OR EYE DONATION* FOR
611 YOU.)

612 Upon my death, I direct that an anatomical gift of all ~~or any part~~ of my body *or certain organ,*
613 *tissue or eye donations* may be made pursuant to Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title

32.1 and in accordance with my directions, if any. I hereby appoint as my agent, of (address and telephone number), to make any such anatomical gift *or organ, tissue or eye donation* following my death. I further direct that: ... (declarant's directions concerning anatomical gift *or organ, tissue or eye donation*).

This advance directive shall not terminate in the event of my disability.

By signing below, I indicate that I am emotionally and mentally competent to make this advance directive and that I understand the purpose and effect of this document.

(Date) (Signature of Declarant)

The declarant signed the foregoing advance directive in my presence. I am not the spouse or a blood relative of the declarant.

(Witness)

§ 54.1-2986. Procedure in absence of an advance directive; procedure for advance directive without agent; no presumption; persons who may authorize treatment for patients incapable of informed decisions; applicability restricted to nonprotesting patients.

A. Whenever (i) the attending physician of an adult patient has determined after personal examination that such patient, because of mental illness, mental retardation, or any other mental disorder, or a physical disorder which precludes communication or impairs judgment, is incapable of making an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment and such adult patient has not made an advance directive in accordance with this article or (ii) the attending physician of an adult patient has determined after personal examination that such patient, because of mental illness, mental retardation, or any other mental disorder, or a physical disorder which precludes communication or impairs judgment, is incapable of making an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment and the adult patient has made an advance directive in accordance with this article which does not indicate his wishes with respect to the specific course of treatment at issue and does not appoint an agent to make health care decisions upon his becoming incapable of making an informed decision, the attending physician may, upon compliance with the provisions of this section, provide to, withhold or withdraw from such patient medical or surgical care or treatment, including, but not limited to, life-prolonging procedures, 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 competent person in a higher class:

1. A guardian or committee for the patient. This subdivision shall not be construed to require such appointment in order that a treatment 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 of the patient; or

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

If two or more of the persons listed in the same class in subdivisions A 3 through A 6 with equal decision-making priority inform the attending physician that they disagree as to a particular treatment decision, the attending physician may rely on the authorization of a majority of the reasonably available members of that class.

Any person authorized to consent to the providing, withholding or withdrawing of treatment pursuant to this article shall (i) prior to giving consent, make a good faith effort to ascertain the risks and benefits of and alternatives to the treatment and the religious beliefs and basic values of the patient receiving treatment, and to inform the patient, to the extent possible, of the proposed treatment and the fact that someone else is authorized to make a decision regarding that treatment and (ii) base his decision on the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding such treatment to the extent they are known, and if unknown or unclear, on the patient's best interests. *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.*

B. The absence of an advance directive by an adult patient shall not give rise to any presumption as to his intent to consent to or refuse life-prolonging procedures.

C. The provisions of this article shall not apply to authorization of nontherapeutic sterilization, abortion, psychosurgery, or admission to a mental retardation facility or psychiatric hospital, as defined in § 37.1-1; however, the provisions of this article, if otherwise applicable, may be employed to authorize a specific treatment or course of treatment for a person who has been lawfully admitted to a mental retardation facility or psychiatric hospital.

Further, the provisions of this article shall not authorize providing, continuing, withholding or

675 withdrawing of treatment if the provider of the treatment knows that such an action is protested by the
676 patient. No person shall authorize treatment, or a course of treatment, pursuant to this article, that such
677 person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic
678 values of the patient unable to make a decision, whether expressed orally or in writing.

679 D. Prior to withholding or withdrawing treatment for which authorization has been obtained or will
680 be sought pursuant to this article and prior to, or as soon as reasonably practicable thereafter, the
681 initiation of treatment for which authorization has been obtained or will be sought pursuant to this
682 article, and no less frequently than every 180 days while the treatment continues, the attending physician
683 shall obtain written certification that the patient is incapable of making an informed decision regarding
684 the treatment from a licensed physician or clinical psychologist which shall be based on a personal
685 examination of the patient. Whenever the authorization is being sought for treatment of a mental illness,
686 the second physician or licensed clinical psychologist shall not be otherwise currently involved in the
687 treatment of the person assessed. The cost of the assessment shall be considered for all purposes a cost
688 of the patient's treatment.

689 E. On petition of any person to the circuit court of the county or city in which any patient resides or
690 is located for whom treatment will be or is currently being provided, withheld or withdrawn pursuant to
691 this article, the court may enjoin such action upon finding by a preponderance of the evidence that the
692 action is not lawfully authorized by this article or by other state or federal law. #