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SENATE BILL NO. 677

Offered January 24, 2000

A BILL to amend and reenact §§ 54.1-2982, 54.1-2987, 54.1-2990, and 54.1-2992 of the Code of Virginia, relating to health care decisions.

Patrons—Forbes, Colgan, Hanger, Martin, Mims, Newman, Puckett, Quayle, Rerras, Schrock and Trumbo; Delegates: Black, Bolvin, Bryant, Byron, Callahan, Cantor, Davis, Day, Devolites, Dickinson, Griffith, Harris, Ingram, Johnson, Katzen, Kilgore, Landes, Larrabee, Louderback, Marshall, McClure, McDonnell, McEachin, McQuigg, Nixon, O'Brien, Putney, Ruff, Rust, Suit, Tata, Wagner and Ware

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2982, 54.1-2987, 54.1-2990, and 54.1-2992 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 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1.

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

"Continue life-sustaining treatment pending completion of the patient's transfer" means continuation of such ongoing care and provision of such nutrition, hydration, medication, and mechanical and chemical resuscitation, as in the reasonable medical judgment of the attending physician is necessary to sustain the patient's life while awaiting completion of transfer, including initiation of cardiopulmonary resuscitation and attention to infection and fluids, but not including surgical procedures or any measures rejected by the terms of the patient's advance directive or by the designated or authorized person's treatment decisions.

"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.

"Futile treatment" means any treatment that, in reasonable medical judgment, will not prevent the patient's death for more than, at most, a few minutes to hours."

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, mental retardation, or any other mental or physical disorder which precludes communication or impairs judgment and which has been diagnosed and certified in writing by his attending physician and a second physician or licensed clinical psychologist after personal examination of such patient, to make an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed medical 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

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60 condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the
61 dying process. The term includes artificially administered hydration and nutrition. However, nothing in
62 this act shall prohibit the administration of medication or the performance of any medical procedure
63 deemed necessary to provide comfort care or to alleviate pain, including the administration of pain
64 relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and
65 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include
66 cardiopulmonary resuscitation.

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

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

74 "Qualified patient" means a patient who has made an advance directive in accordance with this
75 article and either (i) has been diagnosed and certified in writing by the attending physician and a second
76 physician or licensed clinical psychologist after personal examination to be incapable of making an
77 informed decision about providing, withholding or withdrawing a specific medical treatment or course of
78 treatment, in accordance with § 54.1-2986 or (ii) has been diagnosed and certified in writing by the
79 attending physician to be afflicted with a terminal condition.

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

83 "Witness" means a person who is not a spouse or blood relative of the patient. Employees of health
84 care facilities and physician's offices, who act in good faith, shall be permitted to serve as witnesses for
85 purposes of this article.

86 § 54.1-2987. Transfer of patient by physician who refuses to comply with advance directive or
87 treatment decision.

88 An attending physician who refuses to comply with (i) the advance directive of a qualified patient or
89 (ii) the treatment decision of a person designated to make the decision (i) by the declarant in his
90 advance directive pursuant to § 54.1-2984 or (ii)(iii) the treatment decision of an authorized person
91 pursuant to § 54.1-2986 shall make a reasonable effort to transfer the patient to another physician and
92 shall comply with § 54.1-2990.

93 This section shall apply even if the attending physician determines the treatment requested to be
94 medically or ethically inappropriate.

95 § 54.1-2990. Medically or ethically inappropriate treatment not required; procedure when physician
96 refuses to comply with an advance directive or a designated person's treatment decision; mercy killing or
97 euthanasia prohibited.

98 A. Nothing in this article shall be construed to require a physician to prescribe or render medical
99 treatment to a patient that the physician determines to be medically or ethically inappropriate. However,
100 in such a case, if the physician's determination is contrary to the terms of an advance directive of a
101 qualified patient or the treatment decision of a person designated to make the decision under this article
102 or a Durable Do Not Resuscitate Order, the physician shall make a reasonable effort to transfer the
103 patient to another physician and shall notify, in writing, the next of kin, if available, or any person
104 designated pursuant to § 54.1-2984 or authorized pursuant to § 54.1-2986 to make treatment decisions
105 on behalf of the patient.

106 B. Whenever a refusal to provide treatment in compliance with the terms of an advance directive or
107 designated or authorized person's treatment decision would, in reasonable medical judgment, be likely to
108 result in the death of the patient, the physician so refusing shall continue life-sustaining treatment
109 pending completion of the patient's transfer to a physician willing to so comply; however, the
110 physician's obligation to provide such treatment shall not exceed a period of fourteen days following the
111 date on which written notice of the refusal is given to any next of kin or any person designated
112 pursuant to § 54.1-2984 or authorized pursuant to § 54.1-2986 to consent on the patient's behalf, plus
113 any additional period directed by court order in accordance with subsection C of this section. However,
114 no physician shall be required to provide futile treatment for any length of time.

115 C. An agent appointed to make health care decisions pursuant to § 54.1-2984, or any person who
116 may authorize treatment pursuant to subsection A of § 54.1-2986 regardless of order of priority, may
117 petition the appropriate circuit court, or a judge as defined in § 37.1-1, for an extension of the
118 fourteen-day period required pursuant to subsection B of this section for complying with the patient's
119 advance directive or the designated or authorized person's treatment decision. The refusing physician
120 shall be notified of the extension petition simultaneously with the filing of the petition for the extension.

121 D. The circuit court or judge as defined in § 37.1-1 shall schedule the hearing as soon as possible,

but, in no case, more than fourteen days after the date the extension petition was filed. After an expedited hearing at which all parties shall be given the opportunity to present evidence and arguments, the circuit court or judge as defined in § 37.1-1 shall grant an extension for a specified period upon a determination, based on the preponderance of the evidence, that there is a reasonable prospect that a physician willing to accept transfer of the patient and to comply with the patient's advance directive or designated or authorized person's treatment decision can be found if the extension is granted. The court may order brief extensions, each of which shall not exceed five days, to preserve the patient's life pending the scheduling and conducting of the hearing and the rendering of the decision on the petition for extension.

E. Nothing in this section shall require the provision of treatment that the physician is physically or legally unable to provide or is physically or legally unable to provide without thereby denying the same treatment to another patient.

F. Nothing in this article shall be construed to condone, authorize or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

§ 54.1-2992. Preservation of existing rights.

The provisions of this article are cumulative with existing law regarding an individual's right to consent or refuse to consent to medical treatment and shall not impair any existing rights or responsibilities which a health care provider, a patient, including a minor or incapacitated patient, or a patient's family may have in regard to the providing, withholding or withdrawal of life-prolonging medical procedures under the common law or statutes of the Commonwealth; however, this section shall not be construed to authorize violations of § 54.1-2990.