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HOUSE BILL NO. 2334

Offered January 14, 2009

Prefiled January 14, 2009

A *BILL to amend and reenact § 54.1-2982 of the Code of Virginia, relating to advanced medical directives.*

Patron—Amundson

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2982 of the Code of Virginia is 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, including visitation, provided the advance directive makes express provisions for visitation and subject to physician orders and policies of the institution to which the declarant is admitted. 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 (§ 32.1-289.2 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.

"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.

"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. *At least one of the physicians or the licensed clinical psychologist making this determination shall have completed a training program in capacity assessments approved by the Board of Medicine for the purpose of making capacity determinations.* 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 §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation.

"Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient

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59 has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of
60 surroundings in a learned manner, other than reflex activity of muscles and nerves for low level
61 conditioned response, and from which, to a reasonable degree of medical probability, there can be no
62 recovery.

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

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

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

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

77 **2. That the Board of Medicine shall develop or approve a program or programs in capacity**
78 **assessments to assist physicians and licensed clinical psychologists in making capacity**
79 **determinations pursuant to this Act.**