

094030352

## SENATE BILL NO. 1142

Offered January 14, 2009

Prefiled January 13, 2009

*A BILL to amend and reenact §§ 54.1-2982, 54.1-2983, as it is currently effective and as it shall become effective, 54.1-2984, 54.1-2985, as it is currently effective and as it shall become effective 54.1-2986, 54.1-2987, 54.1-2987.1, 54.1-2988, 54.1-2989, 54.1-2990, 54.1-2991, 54.1-2992 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 54.1-2983.1, 54.1-2983.2, 54.1-2983.3, 54.1-2985.1, 54.1-2986.1, and 54.1-2986.2 relating to advance medical directives.*

Patron—Whipple

Referred to Committee on Education and Health

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 54.1-2982, 54.1-2983, 54.1-2984, 54.1-2985, 54.1-2986, 54.1-2987, 54.1-2987.1, 54.1-2988, 54.1-2989, 54.1-2990, 54.1-2991, 54.1-2992 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 54.1-2983.1, 54.1-2983.2, 54.1-2983.3, 54.1-2985.1, 54.1-2986.1, and 54.1-2986.2 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 health 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.

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

"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, *continuing*, withholding, or withdrawing a specific ~~medical~~ *health care* treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed ~~medical~~ *health care* decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. *The second physician or licensed clinical psychologist shall not be otherwise currently involved in the treatment of the patient, unless such an independent physician or licensed clinical psychologist is not reasonably available.* 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

INTRODUCED

SB1142

59 considered incapable of making an informed decision.

60 "Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes  
61 mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is  
62 otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal  
63 condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the  
64 dying process. The term includes artificially administered hydration and nutrition. However, nothing in  
65 this act shall prohibit the administration of medication or the performance of any medical procedure  
66 deemed necessary to provide comfort care or to alleviate pain, including the administration of pain  
67 relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and  
68 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include  
69 cardiopulmonary resuscitation.

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

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

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

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

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

89 § 54.1-2983. (For contingent expiration date - see Editor's notes) Procedure for making advance  
90 directive; notice to physician.

91 Any ~~competent~~ adult *capable of making an informed decision* may, at any time, make a written  
92 advance directive authorizing the ~~providing, withholding or withdrawal of life-prolonging procedures in~~  
93 ~~the event such person should have a terminal condition.~~ A written advance directive may also appoint an  
94 agent to make health care decisions for the declarant under the circumstances stated in the advance  
95 directive ~~if the declarant should be to address any or all forms of health care in the event the declarant~~  
96 ~~is later~~ determined to be incapable of making an informed decision. A written advance directive shall be  
97 signed by the declarant in the presence of two subscribing witnesses *and may (i) specify the health care*  
98 *the declarant does or does not authorize; (ii) appoint an agent to make health care decisions for the*  
99 *declarant; and (iii) specify an anatomical gift, after the declarant's death, of all of the declarant's body*  
100 *or an organ, tissue or eye donation pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title*  
101 *32.1.*

102 Further, any ~~competent~~ adult *capable of making an informed decision* who has been diagnosed by his  
103 attending physician as being in a terminal condition may make an oral advance directive ~~to authorize the~~  
104 ~~providing, withholding or withdrawing of life-prolonging procedures or to appoint (i) directing the~~  
105 ~~specific health care the declarant does or does not authorize in the event the declarant is incapable of~~  
106 ~~making an informed decision, and (ii) appointing an agent to make health care decisions for the~~  
107 ~~declarant under the circumstances stated in the advance directive if the declarant should be determined~~  
108 ~~to be incapable of making an informed decision. An oral advance directive shall be made in the~~  
109 ~~presence of the attending physician and two witnesses.~~

110 *An advance directive may authorize an agent to take any lawful actions necessary to carry out the*  
111 *declarant's decisions, including, but not limited to, granting releases of liability to medical providers,*  
112 *releasing medical records, and making decisions regarding who may visit the patient.*

113 It shall be the responsibility of the declarant to provide for notification to his attending physician that  
114 an advance directive has been made. In the event the declarant is comatose, incapacitated or otherwise  
115 mentally or physically incapable of communication, any other person may notify the physician of the  
116 existence of an advance directive. An attending physician who is so notified shall promptly make the  
117 advance directive or a copy of the advance directive, if written, or the fact of the advance directive, if  
118 oral, a part of the declarant's medical records.

119 *In the event that any portion of an advance directive is held to be invalid by a court of law, such*  
120 *invalidity shall not affect the remaining provisions of the advance directive.*

§ 54.1-2983. (For contingent effective date - see Editor's note) Procedure for making advance directive; notice to physician.

Any ~~competent~~ adult *capable of making an informed decision* may, at any time, make a written advance directive ~~authorizing the providing, withholding or withdrawing of life-prolonging procedures in the event such person should have a terminal condition.~~ A written advance directive may also appoint an agent to make health care decisions for the declarant under the circumstances stated in the advance directive ~~if the declarant should be to address any or all forms of health care in the event the declarant is later determined to be incapable of making an informed decision.~~ A written advance directive shall be signed by the declarant in the presence of two subscribing witnesses *and may (i) specify the health care the declarant does or does not authorize; (ii) appoint an agent to make health care decisions for the declarant; and (iii) specify an anatomical gift, after the declarant's death, of all of the declarant's body or an organ, tissue or eye donation pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.* A written advance directive may be submitted to the Advance Health Care Directive Registry, pursuant to Article 9 (§ 54.1-2994 et seq.) of this chapter. Such directive shall be notarized before being submitted to the registry.

Further, any ~~competent~~ adult *capable of making an informed decision* who has been diagnosed by his attending physician as being in a terminal condition may make an oral advance directive ~~to authorize the providing, withholding or withdrawing of life-prolonging procedures or to appoint (i) directing the specific health care the declarant does or does not authorize in the event the declarant is incapable of making an informed decision, and (ii) appointing an agent to make health care decisions for the declarant under the circumstances stated in the advance directive if the declarant should be determined to be incapable of making an informed decision.~~ An oral advance directive shall be made in the presence of the attending physician and two witnesses.

*An advance directive may authorize an agent to take any lawful actions necessary to carry out the declarant's decisions, including, but not limited to, granting releases of liability to medical providers, releasing medical records, and making decisions regarding who may visit the patient.*

It shall be the responsibility of the declarant to provide for notification to his attending physician that an advance directive has been made. If an advance directive has been submitted to the Advance Health Care Directive Registry pursuant to Article 9 of this chapter, it shall be the responsibility of the declarant to provide his attending physician, legal representative, or other person with the information necessary to access the advance directive. In the event the declarant is comatose, incapacitated or otherwise mentally or physically incapable of communication, any other person may notify the physician of the existence of an advance directive and, if applicable, the fact that it has been submitted to the Advance Health Care Directive Registry. An attending physician who is so notified shall promptly make the advance directive or a copy of the advance directive, if written, or the fact of the advance directive, if oral, a part of the declarant's medical records.

*In the event that any portion of an advance directive is held to be invalid by a court of law, such invalidity shall not affect the remaining provisions of the advance directive.*

§ 54.1-2983.1. Participation in health care research.

An advance directive may authorize an agent to approve participation by the declarant in any health care study approved by an institutional review board pursuant to applicable federal regulations, or by a research review committee pursuant to Chapter 5.1 (§ 32.1-123 et seq.) of Title 32.1 that (i) offers the prospect of direct therapeutic benefit to the declarant, or (ii) aims to increase scientific understanding of any condition that the declarant may have or otherwise to promote human well-being, even though it offers no prospect of direct benefit to the patient.

§ 54.1-2983.2. Capacity; required determinations.

A. Every adult shall be presumed to be capable of making an informed decision unless he is determined to be incapable of making an informed decision in accordance with this article. A determination that a patient is incapable of making an informed decision may apply to a particular health care decision, to a specified set of health care decisions, or to all health care decisions. No person shall be deemed incapable of making an informed decision based solely on a particular clinical diagnosis.

B. Prior to providing, continuing, withholding, or withdrawing health care pursuant to an authorization that has been obtained or will be sought pursuant to this article and prior to, or as soon as reasonably practicable after initiating health care for which authorization has been obtained or will be sought pursuant to this article, and no less frequently than every 180 days while the need for health care continues, the attending physician shall, in addition to his own written certification, obtain written certification that the patient is incapable of making an informed decision regarding health care from a physician or licensed clinical psychologist that shall be based on a personal examination of the patient. The second physician or licensed clinical psychologist shall not be otherwise currently involved in the treatment of the person assessed, unless such an independent physician or clinical psychologist is not

182 reasonably available. The cost of the assessment shall be considered for all purposes a cost of the  
183 patient's health care.

184 C. If, at any time, a patient is determined to be incapable of making an informed decision, the  
185 patient shall be notified, as soon as practical and to the extent he is capable of receiving such notice,  
186 that such determination has been made before providing, continuing, withholding, or withdrawing health  
187 care as authorized by this article. Such notice shall also be provided, as soon as practical, to the  
188 patient's agent or person authorized by § 54.1-2986 to make health care decisions on his behalf.

189 D. A single physician may, at any time, upon personal evaluation, determine that a patient who has  
190 previously been determined to be incapable of making an informed decision is now capable of making  
191 an informed decision, provided such determination is set forth in writing.

192 § 54.1-2983.3. Exclusions and limitations of advance directives.

193 A. The absence of an advance directive by an adult patient shall not give rise to any presumption as  
194 to his intent to consent to or refuse any particular health care.

195 B. The provisions of this article shall not apply to authorization of nontherapeutic sterilization,  
196 abortion, psychosurgery, or admission to a facility, as defined in § 37.2-100; however, the provisions of  
197 this article, if otherwise applicable, may be employed to authorize a specific treatment or course of  
198 treatment for a person who has been lawfully admitted to such a facility.

199 C. The provisions of authorizing emergency custody, temporary detention, involuntary admission, and  
200 mandatory outpatient treatment set forth in Chapter 8 of Title 37.2 shall apply to all adults,  
201 notwithstanding any contrary instruction in any advance directive. However, a patient's advance  
202 directive shall be given full effect to the extent that it does not conflict with such provisions, or any  
203 other provision of law.

204 § 54.1-2984. Suggested form of written advance directives.

205 An advance directive executed pursuant to this article may, but need not, be in the following form;  
206 and may (i) direct a specific procedure or treatment to be provided, such as artificially administered  
207 hydration and nutrition; (ii) direct a specific procedure or treatment to be withheld; or (iii) appoint an  
208 agent to make health care decisions for the declarant as specified in the advance directive if the  
209 declarant is determined to be incapable of making an informed decision, including the decision to make,  
210 after the declarant's death, an anatomical gift of all of the declarant's body or an organ, tissue or eye  
211 donation pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1 and in compliance with  
212 any directions of the declarant. Should any other specific directions be held to be invalid, such invalidity  
213 shall not affect the advance directive. If the declarant appoints an agent in an advance directive, that  
214 agent shall have the authority to make health care decisions for the declarant as specified in the advance  
215 directive if the declarant is determined to be incapable of making an informed decision and shall have  
216 decision-making priority over any individuals authorized under § 54.1-2986 to make health care  
217 decisions for the declarant. In no case shall the agent refuse or fail to honor the declarant's wishes in  
218 relation to anatomical gifts or organ, tissue or eye donation.

#### 219 ADVANCE MEDICAL DIRECTIVE

220 I, ....., willfully and voluntarily make known my desire and do hereby  
221 declare wishes in the event that I am incapable of making an informed decisio-  
222 n, as follows:

223 If at any time my attending physician should determine that I have a terminal  
224 condition where the application of life prolonging procedures would serve only  
225 to artificially prolong the dying process, I direct that such procedures be  
226 withheld or withdrawn, and that I be permitted to die naturally with only the  
227 administration of medication or the performance of any medical procedure  
228 deemed necessary to provide me with comfort care or to alleviate pain (OPTION:  
229 I specifically direct that the following procedures or treatments be provided  
230 to me: .....)

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

235 I understand that my advance directive may include the selection of an agent as well as set forth my  
236 choices regarding health care. The term "health care" means the furnishing of services to any individual  
237 for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability,  
238 including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy;  
239 admission to a hospital, assisted living facility, or other health care facility; psychiatric or other mental  
240 health treatment; and life-prolonging procedures and palliative care.

241 The phrase "incapable of making an informed decision" means unable to understand the nature,  
242 extent and probable consequences of a proposed health care decision or unable to make a rational

evaluation of the risks and benefits of a proposed health care decision as compared with the risks and benefits of alternatives to that decision, or unable to communicate such understanding in any way.

The determination that I am incapable of making an informed decision shall be made by my attending physician and a second physician or licensed clinical psychologist after a personal examination of me and shall be certified in writing. The second physician or licensed clinical psychologist shall not be otherwise currently involved in my treatment, unless such independent physician or licensed clinical psychologist is not reasonably available. Such certification shall be required before health care is provided, continued, withheld, or withdrawn, before any named agent shall be granted authority to make health care decisions on my behalf, and before, or as soon as reasonably practicable after, health care is provided, continued, withheld, or withdrawn and every 180 days thereafter while the need for health care continues.

If, at any time, I am determined to be incapable of making an informed decision, I shall be notified, to the extent I am capable of receiving such notice, that such determination has been made before health care is provided, continued, withheld, or withdrawn. Such notice shall also be provided, as soon as practical, to my named agent or person authorized by § 54.1-2986 to make health care decisions on my behalf. If I am later determined to be capable of making an informed decision by a physician, in writing, upon personal examination, any further health care decisions will require my informed consent.

(SELECT ANY OR ALL OF THE OPTIONS BELOW.)

OPTION I: APPOINTMENT OF AGENT (CROSS THROUGH OPTIONS I AND II BELOW IF YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.)

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

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

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

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

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

The powers of my agent shall include the following:

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

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

C. To employ and discharge my health care providers;

D. To authorize my admission to or discharge (including transfer to another facility) from any hospital, hospice, nursing home, ~~adult home~~ *assisted living facility* or other medical care facility for services other than those for treatment of mental illness requiring admission procedures provided in Article 1 (§ 37.2-800 et seq.) of Chapter 8 of Title 37.2; ~~and~~

E. *To authorize my participation in any health care study approved by an institutional review board or research review committee according to applicable federal or state law that (i) offers the prospect of direct therapeutic benefit to me, or (ii) aims to increase scientific understanding of any condition that I may have or otherwise to promote human well-being, even though it offers no prospect of direct benefit to me;*

F. *To make decisions regarding visitation during any time that I am admitted to any health care facility, consistent with the following directions:.....; and*

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

Further, my agent shall not be liable for the costs of ~~treatment~~ *health care* pursuant to his authorization, based solely on that authorization.

**OPTION III: HEALTH CARE INSTRUCTIONS**

**(CROSS THROUGH PARAGRAPHS A AND/OR B IF YOU DO NOT WANT TO GIVE ADDITIONAL SPECIFIC INSTRUCTIONS ABOUT YOUR HEALTH CARE.)**

A. *I specifically direct that I receive the following health care if it is medically appropriate under the circumstances as determined by my attending physician: .....*

B. *I specifically direct that the following health care not be provided to me under the following circumstances (you may specify that certain health care not be provided under any circumstances):  
.....*

**OPTION IV: END OF LIFE INSTRUCTIONS**

**(CROSS OUT THIS OPTION IF YOU DO NOT WANT TO GIVE INSTRUCTIONS ABOUT YOUR HEALTH CARE IF YOU HAVE A TERMINAL CONDITION.)**

*If at any time my attending physician should determine that I have a terminal condition where the application of life-prolonging procedures, including artificial respiration, artificially administered nutrition and hydration, and cardiopulmonary resuscitation, 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 the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain  
(OPTION: I specifically direct that the following health care be provided to me in the event I am diagnosed with a terminal condition: .....)*

*In the absence of my ability to give directions regarding the use of such life-prolonging procedures, it is my intention that this advance directive shall be honored by my family and physician as the final expression of my legal right to refuse health care and acceptance of the consequences of such refusal.*

*My other instructions regarding end of life care are as follows: .....*

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

Upon my death, I direct that an anatomical gift of all of my body or certain organ, tissue or eye donations may be made pursuant to Article 2 (§ 32.1-289.2 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.

**AFFIRMATION AND RIGHT TO REVOKE:** By signing below, I indicate that I am emotionally and mentally ~~competent~~ *capable of making* this advance directive and that I understand the purpose and effect of this document. *I understand I may revoke all or any part of this document at any time (i) with a signed, dated writing; (ii) by physical cancellation or destruction of this advance directive by myself or by directing someone else to destroy it in my presence; or (iii) by my oral expression of intent*

to revoke.

\_\_\_\_\_  
(Date) (Signature of Declarant)

The declarant signed the foregoing advance directive in my presence.

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Witness)

§ 54.1-2985. (For contingent expiration date - see Editor's notes) Revocation of an advance directive.

An advance directive may be revoked at any time by the declarant *who is capable of understanding the nature and consequences of his acts* (i) by a signed, dated writing; (ii) by physical cancellation or destruction of the advance directive by the declarant or another in his presence and at his direction; or (iii) by oral expression of intent to revoke. *A declarant may make a partial revocation of this advance directive, in which case any remaining and nonconflicting provisions of the advance directive shall remain in effect. In the event of the revocation of the designation of an agent, subsequent decisions about health care shall be made consistent with the provisions of this article.* Any such revocation shall be effective when communicated to the attending physician. No civil or criminal liability shall be imposed upon any person for a failure to act upon a revocation unless that person has actual knowledge of such revocation.

§ 54.1-2985. (For contingent effective date - see Editor's note) Revocation of an advance directive.

A. An advance directive may be revoked at any time by the declarant *who is capable of understanding the nature and consequences of his acts* (i) by a signed, dated writing; (ii) by physical cancellation or destruction of the advance directive by the declarant or another in his presence and at his direction; or (iii) by oral expression of intent to revoke. *A declarant may make a partial revocation of this advance directive, in which case any remaining and nonconflicting provisions of the advance directive shall remain in effect. In the event of the revocation of the designation of an agent, subsequent decisions about health care shall be made consistent with the provisions of this article.* Any such revocation shall be effective when communicated to the attending physician. No civil or criminal liability shall be imposed upon any person for a failure to act upon a revocation unless that person has actual knowledge of such revocation.

B. If an advance directive has been submitted to the Advance Health Care Directive Registry pursuant to Article 9 (§ 54.1-2994 et seq.) of this chapter, any revocation of such directive shall also be notarized before being submitted to the Department of Health for removal from the registry. However, failure to notify the Department of Health of the revocation of a document filed with the registry shall not affect the validity of the revocation, as long as it meets the requirements of subsection A.

§ 54.1-2985.1. *Injunction; court-ordered health care.*

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

B. *Nothing in this article shall limit the ability of any person to petition and obtain a court order for health care, including mental health treatment authorized by Chapter 8 (§ 37.2-800 et seq.) of Title 37.2, of any patient pursuant to any other existing law in the Commonwealth.*

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

A. Whenever (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 a patient is determined to be~~ incapable of making an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment and such adult patient and (i) 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~~ that does not indicate his wishes with respect to the specific course of ~~treatment~~ health care 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, ~~continue~~, withhold or withdraw from such patient medical or surgical care or treatment, including, but not limited to, life-prolonging procedures, health care upon the authorization of any of the following persons, in the specified order of priority, if the physician is not aware of any available, willing and ~~competent~~ capable 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~~ health care decision can be made under this section; or

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

3. An adult child of the patient; or

4. A parent of the patient; or

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

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

7. Any adult, except any director, employee or agent of a health care provider currently involved in the care of the patient, who has exhibited special care and concern for the patient and who is familiar with the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding such health care to the extent they are known. The determination of familiarity under this subsection shall be made by the health care facility's ethics committee, if one exists, and otherwise by two physicians not currently involved in the care of the patient.

If two or more of the persons listed in the same class in subdivisions A 3 through A 67 with equal decision-making priority inform the attending physician that they disagree as to a particular ~~treatment~~ health care decision, the attending physician may rely on the authorization of a majority of the reasonably available members of that class.

*B. If there is no individual eligible to make health care decisions in subsection A, the patient's attending physician shall be authorized to provide, continue, withhold, or withdraw health care without obtaining a court order if such health care decision has been affirmed and documented as being ethically acceptable by the health care facility's ethics committee, if one exists, or by two physicians who are not currently involved in the treatment of the patient and who did not make the determination that the patient was incapable of making an informed decision.*

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. C. 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 facility, as defined in § 37.2-100; 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 such a facility.

Further, the provisions of this article shall not authorize providing, continuing, withholding or withdrawing of treatment if the provider of the treatment knows that such an action is protested by the patient. No person shall authorize treatment, or a course of treatment, pursuant to this article, that such person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic values of the patient unable to make a decision, whether expressed orally or in writing.

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

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

§ 54.1-2986.1. Duties and authority of agent or person identified in § 54.1-2986.

A. If the declarant appoints an agent in an advance directive, that agent shall have (i) 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 (ii) decision-making priority over any



person identified in § 54.1-2986. 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. Decisions to restrict visitation of the patient may be made by an agent only if the declarant has expressly included provisions for visitation in his advance directive; such visitation decisions shall be subject to physician orders and policies of the institution to which the declarant is admitted. No person authorized to make decisions for a patient under § 54.1-2986 shall have authority to restrict visitation of the patient.

B. Any agent or person authorized to make health care decisions pursuant to this article shall (i) undertake a good faith effort to ascertain the risks and benefits of, and alternatives to any proposed health care, (ii) make a good faith effort to ascertain the religious values and basic values of the patient, and (iii) to the extent possible, base his decisions on the beliefs and values of the patient, or if they are unknown, on the patient's best interests.

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

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

B. If a patient who is incapable of making an informed decisions protests a health care recommendation that is otherwise authorized by his advanced directive, his agent may make a decision consistent with the advance directive over the patient's protest if:

1. The decision does not involve withholding or withdrawing life-prolonging procedures;
2. The patient's advance directive explicitly states that the provisions of his advance directive regarding the specific decision at issue should govern, even over his later protest;
3. The patient's advance directive was signed by the patient's attending physician or licensed clinical psychologist who attested that the patient was capable of making an informed decision and understood the consequences of the provision; and

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

C. If a patient who is incapable of making an informed decisions protests a health care recommendation, his agent, or person authorized to make decisions by § 54.1-2986, may make a decision over the patient's protest if:

1. The decision does not involve withholding or withdrawing life-prolonging procedures;
2. The health care decision is based on the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding such health care, or if such preferences are unknown is in the patient's best interests; and
3. The health care that is to be provided, continued, withheld, or withdrawn has been affirmed and documented as being ethically acceptable by the health care facility's ethics committee, if one exists, or otherwise by two physicians not currently involved in the patient's care, or in the determination of the patient's capacity to make health care decisions.

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

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

§ 54.1-2987. Transfer of patient by physician who refuses to comply with advance directive or health care decision.

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

This section shall apply even if the attending physician determines the treatment/health care requested to be medically or ethically inappropriate.

§ 54.1-2987.1. Durable Do Not Resuscitate Orders.

A. A Durable Do Not Resuscitate Order may be issued by a physician for his patient with whom he has a bona fide physician/patient relationship as defined in the guidelines of the Board of Medicine, and only with the consent of the patient or, if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the

548 person authorized to consent on the patient's behalf.

549 B. This section shall not authorize any health care provider or practitioner to follow a Durable Do  
550 Not Resuscitate Order for any patient who is able to, and does, express to such health care provider or  
551 practitioner the desire to be resuscitated in the event of cardiac or respiratory arrest.

552 If the patient is a minor or is otherwise incapable of making an informed decision, the expression of  
553 the desire that the patient be resuscitated by the person authorized to consent on the patient's behalf shall  
554 so revoke the provider's or practitioner's authority to follow a Durable Do Not Resuscitate Order.

555 The expression of such desire to be resuscitated prior to cardiac or respiratory arrest shall constitute  
556 revocation of the Order; however, a new Order may be issued upon consent of the patient or the person  
557 authorized to consent on the patient's behalf.

558 C. Durable Do Not Resuscitate Orders issued in accordance with this section shall remain valid and  
559 in effect until revoked. In accordance with this section and regulations promulgated by the Board of  
560 Health, (i) qualified emergency medical services personnel as defined in § 32.1-111.1 and (ii) licensed  
561 health care practitioners in any facility, program or organization operated or licensed by the Board of  
562 Health or by the Department of Mental Health, Mental Retardation and Substance Abuse Services or  
563 operated, licensed or owned by another state agency are authorized to follow Durable Do Not  
564 Resuscitate Orders that are available to them in a form approved by the Board of Health.

565 D. The provisions of this section shall not authorize any qualified emergency medical services  
566 personnel or licensed health care provider or practitioner who is attending the patient at the time of  
567 cardiac or respiratory arrest to provide, continue, withhold or withdraw ~~treatment~~ health care if such  
568 provider or practitioner knows that taking such action is protested by the patient incapable of making an  
569 informed decision. No person shall authorize providing, continuing, withholding or withdrawing  
570 ~~treatment~~ health care pursuant to this section that such person knows, or upon reasonable inquiry ought  
571 to know, is contrary to the religious beliefs or basic values of a patient incapable of making an informed  
572 decision or the wishes of such patient fairly expressed when the patient was capable of making an  
573 informed decision. Further, this section shall not authorize the withholding of other medical  
574 interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort  
575 care or to alleviate pain.

576 E. For the purposes of this section:

577 "Health care provider" includes, but is not limited to, qualified emergency medical services  
578 personnel.

579 "Person authorized to consent on the patient's behalf" means any person authorized by law to consent  
580 on behalf of the patient incapable of making an informed decision or, in the case of a minor child, the  
581 parent or parents having custody of the child or the child's legal guardian or as otherwise provided by  
582 law.

583 F. This section shall not prevent, prohibit or limit a physician from issuing a written order, other  
584 than a Durable Do Not Resuscitate Order, not to resuscitate a patient in the event of cardiac or  
585 respiratory arrest in accordance with accepted medical practice.

586 G. Valid Do Not Resuscitate Orders or Emergency Medical Services Do Not Resuscitate Orders  
587 issued before July 1, 1999, pursuant to the then-current law, shall remain valid and shall be given effect  
588 as provided in this article.

589 § 54.1-2988. Immunity from liability; burden of proof; presumption.

590 A health care facility, physician or other person acting under the direction of a physician shall not be  
591 subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct  
592 as a result of issuing a Durable Do Not Resuscitate Order or the *providing, continuing, withholding* or  
593 the withdrawal of ~~life-prolonging procedures~~ health care under authorization or consent obtained in  
594 accordance with this article or as the result of the provision, withholding or withdrawal of ongoing  
595 ~~life-sustaining~~ health care in accordance with § 54.1-2990. No person or facility providing, *continuing,*  
596 withholding or withdrawing ~~treatment~~ health care or physician issuing a Durable Do Not Resuscitate  
597 Order under authorization or consent obtained pursuant to this article or otherwise in accordance with  
598 § 54.1-2990 shall incur liability arising out of a claim to the extent the claim is based on lack of  
599 authorization or consent for such action.

600 ~~Any agent or person identified in § 54.1-2986~~ who authorizes or consents to the *providing,*  
601 *continuing, withholding* or withdrawal of ~~ongoing life-sustaining~~ health care in accordance with  
602 ~~§ 54.1-2990 or of life-prolonging procedures in accordance with a qualified patient's advance directive or~~  
603 ~~as provided in § 54.1-2986 or a Durable Do Not Resuscitate Order pursuant to § 54.1-2987.1~~ *this article*  
604 shall not be subject, solely on the basis of that authorization or consent, to (i) criminal prosecution or  
605 civil liability for such action or (ii) liability for the cost of ~~treatment~~ health care.

606 The provisions of this section shall apply unless it is shown by a preponderance of the evidence that  
607 the person authorizing or effectuating the *providing, continuing, withholding* or withdrawal of  
608 ~~life-prolonging procedures~~ health care, or issuing, consenting to, making or following a Durable Do Not  
609 Resuscitate Order in accordance with § 54.1-2987.1 did not, in good faith, comply with the provisions of

this article.

The distribution to patients of written advance directives in a form meeting the requirements of § 54.1-2984 and assistance to patients in the completion and execution of such forms by health care providers shall not constitute the unauthorized practice of law pursuant to Chapter 39 (§ 54.1-3900 et seq.) of this title.

An advance directive or Durable Do Not Resuscitate Order made, consented to or issued in accordance with this article shall be presumed to have been made, consented to, or issued voluntarily and in good faith by a ~~competent~~ *an adult who is capable of making an informed decision*, physician or person authorized to consent on the patient's behalf.

§ 54.1-2989. Willful destruction, concealment, etc., of declaration or revocation; penalties.

Any person who willfully conceals, cancels, defaces, obliterates, or damages the advance directive or Durable Do Not Resuscitate Order of another without the declarant's or patient's consent or the consent of the person authorized to consent for the patient or who falsifies or forges a revocation of the advance directive or Durable Do Not Resuscitate Order of another, thereby causing life-prolonging procedures to be utilized in contravention of the previously expressed intent of the patient or a Durable Do Not Resuscitate Order shall be guilty of a Class 6 felony. *Any person who willfully performs such act, when such act does not directly cause life-prolonging procedures to be utilized in contravention of the previously expressed intent of the patient or a Durable Do Not Resuscitate Order, shall be guilty of a Class 1 misdemeanor.*

Any person who falsifies or forges the advance directive or Durable Do Not Resuscitate Order of another, or willfully conceals or withholds personal knowledge of the revocation of an advance directive or Durable Do Not Resuscitate Order, with the intent to cause a withholding or withdrawal of life-prolonging procedures, contrary to the wishes of the declarant or a patient, and thereby, because of such act, directly causes life-prolonging procedures to be withheld or withdrawn and death to be hastened, shall be guilty of a Class 2 felony. *Any person who willfully performs such act, when such act does not directly cause life-prolonging procedures to be withheld or withdrawn and death to be hastened, shall be guilty of a Class 1 misdemeanor.*

§ 54.1-2990. Medically unnecessary health care not required; procedure when physician refuses to comply with an advance directive or a designated person's health care decision; mercy killing or euthanasia prohibited.

A. Nothing in this article shall be construed to require a physician to prescribe or render ~~medical treatment~~ *health care* to a patient that the physician determines to be medically or ethically inappropriate. However, in such a case, if the physician's determination is contrary to the *request of the patient, the terms of an advance directive of a qualified patient or the treatment decision of a person designated to make the decision under this article*, *a patient's advance directive, the decision of an agent or person authorized to make decisions pursuant to § 54.1-2986, or a Durable Do Not Resuscitate Order*, the physician shall make a reasonable effort to inform the patient or the patient's ~~designated decision-maker~~ *agent or person with decision-making authority pursuant to § 54.1-2986* of such determination and the reasons for the determination. If the conflict remains unresolved, the physician shall make a reasonable effort to transfer the patient to another physician who is willing to comply with the *request of the patient, the terms of the advance directive, the decision of an agent or person authorized to make decisions pursuant to § 54.1-2986, or a Durable Do Not Resuscitate Order*. The physician shall provide the patient or his ~~authorized decision-maker~~ *agent or person with decision-making authority pursuant to § 54.1-2986* a reasonable time of not less than fourteen days to effect such transfer. During this period, the physician shall continue to provide any life-sustaining care to the patient which is reasonably available to such physician, as requested by the patient or his ~~designated decision-maker~~ *agent or person with decision-making authority pursuant to § 54.1-2986*.

B. For purposes of this section, "life-sustaining care" means any ongoing ~~medical treatment~~ *health care* that utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, including hydration, nutrition, maintenance medication, and cardiopulmonary resuscitation.

C. Nothing in this section shall require the provision of ~~treatment~~ *health care* that the physician is physically or legally unable to provide, or ~~treatment~~ *health care* that the physician is physically or legally unable to provide without thereby denying the same ~~treatment~~ *health care* to another patient.

D. 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.

§ 54.1-2991. Effect of declaration; suicide; insurance; declarations executed prior to effective date.

The withholding or withdrawal of life-prolonging procedures in accordance with the provisions of this article shall not, for any purpose, constitute a suicide. Nor shall the making of an advance directive pursuant to this article affect the sale, procurement or issuance of any policy of life insurance, nor shall the making of an advance directive or the issuance of a Durable Do Not Resuscitate Order pursuant to

671 this article be deemed to modify the terms of an existing policy of life insurance. No policy of life  
672 insurance shall be legally impaired or invalidated by the withholding or withdrawal of life-prolonging  
673 procedures from an insured patient in accordance with this article, notwithstanding any term of the  
674 policy to the contrary. A person shall not be required to make an advance directive or consent to a  
675 Durable Do Not Resuscitate order as a condition for being insured for, or receiving, health care services.

676 The declaration of any ~~qualified~~ patient made prior to July 1, 1983, an advance directive made prior  
677 to July 1, 1992, or the issuance, in accordance with the then current law, of a Do Not Resuscitate Order  
678 or an Emergency Medical Services Do Not Resuscitate Order prior to July 1, 1999, shall be given effect  
679 as provided in this article.

680 § 54.1-2992. Preservation of existing rights.

681 The provisions of this article ~~are cumulative with existing law regarding an individual's right to~~  
682 ~~consent or refuse to consent to medical treatment~~ *shall not be construed to alter or limit the authority to*  
683 *provide health care in accordance with any other provision of law or regulation* and shall not impair  
684 any existing rights or responsibilities which a health care provider, a patient, including a minor or  
685 incapacitated patient, or a patient's family may have in regard to the providing, *continuing*, withholding  
686 or withdrawal of life-prolonging medical procedures under the common law or statutes of the  
687 Commonwealth; however, this section shall not be construed to authorize violations of § 54.1-2990.