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SENATE BILL NO. 1270

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 9, 2015)

(Patron Prior to Substitute—Senator Deeds)

A BILL to amend and reenact § 54.1-2982 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 37.2-810.1, relating to admission of incapacitated persons pursuant to advance directive or by guardian; transportation; pilot program.

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2982 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 37.2-810.1 as follows:

§ 37.2-810.1. *Transportation order for admission of incapacitated person pursuant to advance directive or by guardian; pilot program.*

A. If the employee or designee of the local community services board as defined in § 37.2-809 who is conducting the evaluation required by § 37.2-809 (i) determines that (a) the person being evaluated has executed an advance directive in accordance with the Health Care Decisions Act (§ 54.1-2981 et seq.) granting an agent the power to authorize the person's admission to a facility for the treatment of mental illness or (b) a guardian for the person has been appointed pursuant to § 64.2-2009 with authority to consent to such admission pursuant to § 37.2-805.1 and (ii) finds that the person (a) has a mental illness; (b) is incapable of making an informed decision, as defined in § 54.1-2982, regarding admission to a facility for the treatment of mental illness; (c) is in need of treatment in a facility; and (d) is not objecting to treatment in a facility or, if objecting, has granted the agent the power to authorize the person's admission to such a facility over the person's objection or a court has authorized the person's guardian to do so, the employee or designee of the local community services board shall document such determination and findings in writing in an affidavit, advise the person of such determination and findings, and contact the agent or guardian and determine whether the agent or guardian authorizes the person's admission to such a facility. If the agent or guardian authorizes such admission and the employee or designee of the local community services board is able to identify a facility willing to accept the person, this information shall also be included in the affidavit, and the employee or designee may promptly submit the affidavit, by in-person delivery or by electronic or facsimile transmission, to the magistrate with a request for entry of a transportation order on a form developed by the Office of the Executive Secretary of the Supreme Court.

B. Upon receipt of the affidavit by the magistrate, the magistrate shall issue a transportation order as needed to provide for the person's safe transport to the willing facility. The provisions of § 37.2-810 shall apply to any transportation order issued pursuant to this subsection. The admission of the person to the facility shall be in accordance with § 37.2-805.1, and the employee or designee of the local community services board shall take all appropriate action to facilitate the admission of the person. If, at the time of admission, the person is subject to an emergency custody order, the order shall terminate upon the person's admission.

C. If the employee or designee of the local community services board (i) is unable to confirm that the person has an advance directive or that a guardian for the person has been appointed, (ii) finds that the person has an advance directive or guardian but that the person's agent or guardian is unwilling or unable to provide the authorization necessary to admit the person to a facility for the treatment of mental illness, or (iii) finds that the admission of the person to a facility for the treatment of mental illness through the authorization of the person's agent or guardian is otherwise not possible, the employee or designee of the local community services board shall complete the evaluation of the person to determine whether the person meets the criteria for the issuance of a temporary detention order pursuant to § 37.2-809.

D. This section shall only apply in those localities in which the Department has established a pilot program providing for the implementation of this section by the community services board serving such locality. The Department is authorized to establish such a pilot program in one or more localities pursuant to selection criteria adopted by the Department. The Department shall promulgate guidelines and administrative procedures to be followed in any locality where a pilot program is established. Any pilot program established by the Department pursuant to this section shall begin operation on July 1, 2016. The Department shall report by November 30, 2017, to the Chairmen of the House Committee for Courts of Justice, the House Committee on Health, Welfare and Institutions, the Senate Committee for Courts of Justice, and the Senate Committee on Education and Health on the implementation and effectiveness of any pilot program established.

§ 54.1-2982. Definitions.

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60 As used in this article:

61 "Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in
62 accordance with the requirements of § 54.1-2983 or (ii) a witnessed oral statement, made by the
63 declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in
64 accordance with the provisions of § 54.1-2983.

65 "Agent" means an adult appointed by the declarant under an advance directive, executed or made in
66 accordance with the provisions of § 54.1-2983, to make health care decisions for him. The declarant
67 may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of
68 his body pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.

69 "Attending physician" means the primary physician who has responsibility for the health care of the
70 patient.

71 "Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training
72 or experience to assess whether a person is capable or incapable of making an informed decision. *For*
73 *purposes of determining whether a person is capable or incapable of making an informed decision in*
74 *regard to mental health care, including admission to a facility for the treatment of mental illness,*
75 *"capacity reviewer" includes a person designated by the local community services board who is skilled*
76 *in the assessment and treatment of mental illness and who has completed a certification program*
77 *approved by the Department of Behavioral Health and Developmental Services; however, this definition*
78 *shall only apply in those localities in which the State Board of Behavioral Health and Developmental*
79 *Services has established a pilot program pursuant to subsection D of § 37.2-810.1.*

80 "Declarant" means an adult who makes an advance directive, as defined in this article, while capable
81 of making and communicating an informed decision.

82 "Durable Do Not Resuscitate Order" means a written physician's order issued pursuant to
83 § 54.1-2987.1 to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac
84 or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac
85 compression, endotracheal intubation and other advanced airway management, artificial ventilation, and
86 defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate
87 Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as
88 an advance directive.

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

94 "Incapable of making an informed decision" means the inability of an adult patient, because of
95 mental illness, intellectual disability, or any other mental or physical disorder that precludes
96 communication or impairs judgment, to make an informed decision about providing, continuing,
97 withholding or withdrawing a specific health care treatment or course of treatment because he is unable
98 to understand the nature, extent or probable consequences of the proposed health care decision, or to
99 make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this
100 article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise
101 mentally competent and able to communicate by means other than speech, shall not be considered
102 incapable of making an informed decision.

103 "Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes
104 mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is
105 otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal
106 condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the
107 dying process. The term includes artificially administered hydration and nutrition. However, nothing in
108 this act shall prohibit the administration of medication or the performance of any medical procedure
109 deemed necessary to provide comfort care or to alleviate pain, including the administration of pain
110 relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and
111 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include
112 cardiopulmonary resuscitation.

113 "Patient care consulting committee" means a committee duly organized by a facility licensed to
114 provide health care under Title 32.1 or Title 37.2, or a hospital or nursing home as defined in
115 § 32.1-123 owned or operated by an agency of the Commonwealth that is exempt from licensure
116 pursuant to § 32.1-124, to consult on health care issues only as authorized in this article. Each patient
117 care consulting committee shall consist of five individuals, including at least one physician, one person
118 licensed or holding a multistate licensure privilege under Chapter 30 (§ 54.1-3000 et seq.) to practice
119 professional nursing, and one individual responsible for the provision of social services to patients of the
120 facility. At least one committee member shall have experience in clinical ethics and at least two
121 committee members shall have no employment or contractual relationship with the facility or any

involvement in the management, operations, or governance of the facility, other than serving on the patient care consulting committee. A patient care consulting committee may be organized as a subcommittee of a standing ethics or other committee established by the facility or may be a separate and distinct committee. Four members of the patient care consulting committee shall constitute a quorum of the patient care consulting committee.

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

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

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

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

2. That the provisions of this act shall expire on July 1, 2018.