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HOUSE BILL NO. 612

Offered January 13, 2016

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A *BILL to amend and reenact §§ 54.1-2982, 54.1-2985, 54.1-2994, and 54.1-2995 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-2983.01, relating to letters of diminished financial capacity.*

Patrons—Bell, Robert B. and Krizek

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2982, 54.1-2985, 54.1-2994, and 54.1-2995 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-2983.01 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 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1.

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

"Capable of making an informed decision" means the ability of an adult to understand the nature, extent, and probable consequences of a decision and to make a rational evaluation of the risks and benefits of alternatives to that decision.

"Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.

"Declarant" means an adult who makes an advance directive or letter of diminished financial capacity, as defined in this article, while capable of making and communicating an informed decision.

"Diminished financial capacity" means a decline in a declarant's ability to manage money and financial assets to serve his best interests, including the inability to understand the consequences of investment decisions.

"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.

"Financial institution" means any bank, trust company, savings institution, loan association, consumer finance company, credit union, broker, investment company, or investment advisor. For the purposes of this article, "financial institution" includes any employee, agent, qualified individual, or representative of such financial institution.

"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, intellectual disability, or any other mental or physical disorder that precludes communication or impairs judgment, to make an informed decision about providing, continuing, withholding or withdrawing a specific health care treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed health care decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this

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59 article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise
60 mentally competent and able to communicate by means other than speech, shall not be considered
61 incapable of making an informed decision.

62 *"Letter of diminished financial capacity" means a witnessed written document voluntarily executed by*
63 *the declarant in accordance with the requirements of § 54.1-2983.01.*

64 *"Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes*
65 *mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is*
66 *otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal*
67 *condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the*
68 *dying process. The term includes artificially administered hydration and nutrition. However, nothing in*
69 *this act shall prohibit the administration of medication or the performance of any medical procedure*
70 *deemed necessary to provide comfort care or to alleviate pain, including the administration of pain*
71 *relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and*
72 *54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include*
73 *cardiopulmonary resuscitation.*

74 *"Patient care consulting committee" means a committee duly organized by a facility licensed to*
75 *provide health care under Title 32.1 or Title 37.2, or a hospital or nursing home as defined in §*
76 *32.1-123 owned or operated by an agency of the Commonwealth that is exempt from licensure pursuant*
77 *to § 32.1-124, to consult on health care issues only as authorized in this article. Each patient care*
78 *consulting committee shall consist of five individuals, including at least one physician, one person*
79 *licensed or holding a multistate licensure privilege under Chapter 30 (§ 54.1-3000 et seq.) to practice*
80 *professional nursing, and one individual responsible for the provision of social services to patients of the*
81 *facility. At least one committee member shall have experience in clinical ethics and at least two*
82 *committee members shall have no employment or contractual relationship with the facility or any*
83 *involvement in the management, operations, or governance of the facility, other than serving on the*
84 *patient care consulting committee. A patient care consulting committee may be organized as a*
85 *subcommittee of a standing ethics or other committee established by the facility or may be a separate*
86 *and distinct committee. Four members of the patient care consulting committee shall constitute a quorum*
87 *of the patient care consulting committee.*

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

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

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

98 *"Trusted individual" means an adult designated by a declarant under a letter of diminished financial*
99 *capacity executed in accordance with the provisions of § 54.1-2983.01 to be notified by a financial*
100 *institution in the event that the declarant exhibits signs of diminished financial capacity.*

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

104 **§ 54.1-2983.01. Procedure for making letter of diminished financial capacity; notice to financial**
105 **institution.**

106 *Any adult capable of making an informed decision may, at any time, make a letter of diminished*
107 *financial capacity authorizing a financial institution to notify one or more trusted individuals designated*
108 *by the declarant should the declarant exhibit signs of diminished financial capacity.*

109 *A letter of diminished financial capacity shall be signed by the declarant in the presence of two*
110 *subscribing witnesses. A signed and witnessed letter of diminished financial capacity may be submitted*
111 *to the Advance Health Care Registry pursuant to Article 9 (§ 54.1-2994 et seq.).*

112 *It shall be the responsibility of the declarant (i) to provide a letter of diminished financial capacity*
113 *or a copy of such letter to his financial institution or (ii) if a letter of diminished financial capacity has*
114 *been submitted to the Advance Health Care Directive Registry pursuant to Article 9 (§ 54.1-2994 et*
115 *seq.), to provide his financial institution with the information necessary to access the letter of*
116 *diminished financial capacity. Where a letter of diminished capacity or a copy of the letter has been*
117 *provided to a financial institution, it shall become a part of the declarant's financial records.*

118 *In the event that any portion of a letter of diminished financial capacity is invalid or illegal, such*
119 *invalidity or illegality shall not affect the remaining provisions of the letter of diminished financial*
120 *capacity.*

A financial institution that, in good faith and exercising reasonable care, complies with the provisions of this section shall be immune from any criminal, civil, or administrative liability for complying with the terms of the letter of diminished financial capacity.

§ 54.1-2985. Revocation of an advance directive or letter of diminished financial capacity.

A. An advance directive or letter of diminished financial capacity may be revoked at any time by the declarant who is capable of understanding the nature and consequences of his actions (i) by a signed, dated writing; (ii) by physical cancellation or destruction of the advance directive or letter of diminished financial capacity 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 his advance directive or letter of diminished financial capacity, in which case any remaining and nonconflicting provisions of the advance directive or letter of diminished financial capacity shall remain in effect. In the event of the revocation of the designation of an agent in an advance directive, subsequent decisions about health care shall be made consistent with the provisions of this article. In the event of the revocation of the designation of a trusted individual in a letter of diminished financial capacity, subsequent financial decisions shall be made consistent with the provisions of this article. Any such revocation shall be effective when communicated to the attending physician or financial institution, respectively. 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 or letter of diminished financial capacity 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 advance directive or letter of diminished financial capacity 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.

§ 54.1-2994. Advance Health Care Directive Registry established.

The Department of Health shall make available a secure online central registry for advance health care directives and letters of diminished financial capacity.

§ 54.1-2995. Filing of documents with the registry; regulations; fees.

A. A person may submit any of the following documents and the revocations of these documents to the Department of Health for filing in the Advance Health Care Directive Registry established pursuant to this article:

1. A health care power of attorney.
2. An advance directive created pursuant to Article 8 (§ 54.1-2981 et seq.) or a subsequent act of the General Assembly.
3. A declaration of an anatomical gift made pursuant to the Revised Uniform Anatomical Gift Act (§ 32.1-291.1 et seq.).
4. A letter of diminished financial capacity created pursuant to Article 8 (§ 54.1-2981 et seq.).

B. The document may be submitted for filing only by the person who executed the document or his legal representative or designee and shall be accompanied by any fee required by the Department of Health.

C. All data and information contained in the registry shall remain confidential and shall be exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

D. The Board of Health shall promulgate regulations to carry out the provisions of this article, which shall include, but not be limited to (i) a determination of who may access the registry, including physicians, other licensed health care providers, financial institutions, the declarant, and his legal representative or designee; (ii) a means of annually reminding registry users of which documents they have registered; and (iii) fees for filing a document with the registry. Such fees shall not exceed the direct costs associated with development and maintenance of the registry and with the education of the public about the availability of the registry, and shall be exempt from statewide indirect costs charged and collected by the Department of Accounts. No fee shall be charged for the filing of a document revoking any document previously filed with the registry.

2. The Office of the Executive Secretary of the Supreme Court, the Bureau of Financial Institutions of the State Corporation Commission, and the Board of Medicine shall promulgate a standard letter of diminished financial capacity for use by declarants and shall publish such letter by July 1, 2017.