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SENATE BILL NO. 544

Offered January 8, 2020

Prefiled January 7, 2020

A *BILL to amend and reenact § 54.1-2983.2 of the Code of Virginia, relating to advance directives; physician assistants; capacity determinations.*

Patrons—Edwards; Delegate: Rasoul

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2983.2 of the Code of Virginia is amended and reenacted as follows:

§ 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. Except as provided in subsection C, 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 certify in writing upon personal examination of the patient that the patient is incapable of making an informed decision regarding health care and shall obtain written certification from a capacity reviewer that, based upon a personal examination of the patient, the patient is incapable of making an informed decision. However, certification by a capacity reviewer shall not be required if the patient is unconscious or experiencing a profound impairment of consciousness due to trauma, stroke, or other acute physiological condition. The capacity reviewer providing written certification that a patient is incapable of making an informed decision, if required, shall not be otherwise currently involved in the treatment of the person assessed, unless an independent capacity reviewer is not reasonably available. The cost of the assessment shall be considered for all purposes a cost of the patient's health care.

C. If a person has executed an advance directive granting an agent the authority to consent to the person's admission to a facility as defined in § 37.2-100 for mental health treatment and if the advance directive so authorizes, the person's agent may exercise such authority after a determination that the person is incapable of making an informed decision regarding such admission has been made by (i) the attending physician, (ii) a psychiatrist or licensed clinical psychologist, (iii) a licensed psychiatric nurse practitioner, (iv) a *licensed physician assistant*, (v) a licensed clinical social worker, or (vi) a designee of the local community services board as defined in § 37.2-809. Such determination shall be made in writing following an in-person examination of the person and certified by the physician, psychiatrist, licensed clinical psychologist, licensed psychiatric nurse practitioner, *licensed physician assistant*, licensed clinical social worker, or designee of the local community services board who performed the examination prior to admission or as soon as reasonably practicable thereafter. Admission of a person to a facility as defined in § 37.2-100 for mental health treatment upon the authorization of the person's agent shall be subject to the requirements of § 37.2-805.1. When a person has been admitted to a facility for mental health treatment upon the authorization of an agent following such a determination, such agent may authorize specific health care for the person, consistent with the provisions of the person's advance directive, only upon a determination that the person is incapable of making an informed decision regarding such health care in accordance with subsection B.

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

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

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