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HOUSE BILL NO. 843

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Forbes
on February 26, 1998)

(Patron Prior to Substitute—Delegate Orrock)

A BILL to amend and reenact §§ 32.1-111.4, 32.1-111.5, 54.1-2901, 54.1-2982, 54.1-2987.1, 54.1-2988 and 54.1-2989 of the Code of Virginia, relating to Do Not Resuscitate Orders.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-111.4, 32.1-111.5, 54.1-2901, 54.1-2982, 54.1-2987.1, 54.1-2988 and 54.1-2989 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-111.4. Regulations; emergency medical services personnel and vehicles.

A. The State Board of Health shall prescribe by regulation:

1. Requirements for record keeping, supplies, operating procedures and other agency operations;
2. Requirements for the sanitation and maintenance of emergency medical services vehicles and their medical supplies and equipment;

3. Procedures, including the requirements for forms, to authorize qualified emergency medical services personnel to follow ~~Emergency Medical Services~~ Do Not Resuscitate Orders pursuant to § 54.1-2987.1;

4. Requirements for the composition, administration, duties and responsibilities of the State Emergency Medical Services Advisory Board;

5. Requirements, developed in consultation with the Emergency Medical Services Advisory Board, governing the certification and recertification of emergency medical services personnel; and

6. Requirements for written notification to the State Emergency Medical Services Advisory Board, the State Office of Emergency Medical Services, and the Financial Assistance and Review Committee of the Board's action, and the reasons therefor, on requests and recommendations of the Advisory Board, the State Office of Emergency Medical Services or the Committee, no later than five workdays after reaching its decision, specifying whether the Board has approved, denied, or not acted on such requests and recommendations.

B. The Board shall classify agencies and emergency medical services vehicles by type of service rendered and shall specify the medical equipment, the supplies, the vehicle specifications and the personnel required for each classification.

C. In formulating its regulations, the Board shall consider the current Minimal Equipment List for Ambulances adopted by the Committee on Trauma of the American College of Surgeons.

§ 32.1-111.5. Certification and recertification of emergency medical services personnel.

A. The Board shall prescribe by regulation the qualifications required for certification of emergency medical care attendants, including those qualifications necessary for authorization to follow ~~Emergency Medical Services~~ Do Not Resuscitate Orders pursuant to § 54.1-2987.1.

B. Each person desiring certification as emergency medical services personnel shall apply to the Commissioner upon a form prescribed by the Board. Upon receipt of such application, the Commissioner shall cause the applicant to be examined or otherwise determined to be qualified for certification. If the Commissioner determines that the applicant meets the requirements of such regulations, he shall issue a certificate to the applicant. An emergency medical services personnel certificate so issued shall be valid for a period required by law or prescribed by the Board. The certificates may be renewed after successful reexamination of the holder. Any certificate so issued may be suspended at any time that the Commissioner determines that the holder no longer meets the qualifications prescribed for such emergency medical services personnel.

C. The Board shall prescribe by regulation procedures and the qualifications required for the recertification of emergency medical services personnel. Such regulations shall include (i) authorization for continuing education and skills testing, in lieu of a written examination, with the signature of the relevant operational medical director; (ii) authorization for the relevant operational medical director to require the written examinations administered or approved by the Office of Emergency Medical Services, as deemed necessary, of certain emergency medical services personnel; (iii) authorization for exemptions from the written test for recertification by the relevant operational medical director; (iv) triennial recertification of advanced life support providers; (v) approval by the Office of Emergency Medical Services of continuing education modules in which each module may be tested separately; and (vi) effective on January 1, 1998, a sequential option for the completion of the skills tests for recertification.

D. The Commissioner may issue a temporary certificate when he finds that it is in the public interest. A temporary certificate shall be valid for a period not exceeding ninety days.

§ 54.1-2901. Exceptions and exemptions generally.

The provisions of this chapter shall not prevent or prohibit:

1. Any person entitled to practice his profession under any prior law on June 24, 1944, from continuing such practice within the scope of the definition of his particular school of practice;

2. Any person licensed to practice naturopathy prior to June 30, 1980, from continuing such practice in accordance with regulations promulgated by the Board;

3. Any licensed nurse practitioner from rendering care under the supervision of a duly licensed physician when such services are authorized by regulations promulgated jointly by the Board of Medicine and the Board of Nursing;

4. Any registered professional nurse, registered midwife, licensed nurse practitioner, graduate laboratory technician or other technical personnel who have been properly trained from rendering care or services within the scope of their usual professional activities which shall include the taking of blood, the giving of intravenous infusions and intravenous injections, and the insertion of tubes when performed under the orders of a person licensed to practice medicine;

5. Any dentist, pharmacist or optometrist from rendering care or services within the scope of his usual professional activities;

6. Any practitioner licensed or certified by the Board from delegating to personnel in his personal employ and supervised by him, such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by practitioners of the healing arts, if such activities or functions are authorized by and performed for such practitioners of the healing arts and responsibility for such activities or functions is assumed by such practitioners of the healing arts;

7. The rendering of medical advice or information through telecommunications from a physician licensed to practice medicine in Virginia or an adjoining state to emergency medical personnel acting in an emergency situation;

8. The domestic administration of family remedies;

9. The giving or use of massages, steam baths, dry heat rooms, infrared heat or ultraviolet lamps in public or private health clubs and spas;

10. The manufacture or sale of proprietary medicines in this Commonwealth by licensed pharmacists or druggists;

11. The advertising or sale of commercial appliances or remedies;

12. The fitting by nonitinerant persons or manufacturers of artificial eyes, limbs or other apparatus or appliances or the fitting of plaster cast counterparts of deformed portions of the body by a nonitinerant bracemaker or prosthetist for the purpose of having a three-dimensional record of the deformity, when such bracemaker or prosthetist has received a prescription from a licensed physician directing the fitting of such casts and such activities are conducted in conformity with the laws of Virginia;

13. Any person from the rendering of first aid or medical assistance in an emergency in the absence of a person licensed to practice medicine or osteopathy under the provisions of this chapter;

14. The practice of the religious tenets of any church in the ministration to the sick and suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or for compensation;

15. Any legally qualified out-of-state or foreign practitioner from meeting in consultation with legally licensed practitioners in this Commonwealth;

16. Any practitioner of the healing arts licensed or certified and in good standing with the applicable regulatory agency in another state or Canada when that practitioner of the healing arts is in Virginia temporarily and such practitioner has been issued a temporary license or certification by the Board from practicing medicine or the duties of the profession for which he is licensed or certified (i) in a summer camp or in conjunction with patients who are participating in recreational activities, (ii) while participating in continuing educational programs prescribed by the Board, or (iii) by rendering at any site any health care services within the limits of his license, voluntarily and without compensation, to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge as provided in § 54.1-106;

17. The performance of the duties of any commissioned or contract medical officer, physical therapist, or podiatrist in active service in the army, navy, coast guard, marine corps, air force, or public health service of the United States while such individual is so commissioned or serving;

18. Any masseur, who publicly represents himself as such, from performing services within the scope of his usual professional activities and in conformance with state law;

19. Any person from performing services in the lawful conduct of his particular profession or business under state law;

20. Any person from rendering emergency care pursuant to the provisions of § 8.01-225;

21. Qualified emergency medical personnel from following ~~Emergency Medical Services Do Not Resuscitate Orders~~ in accordance with § 54.1-2987.1 and Board of Health regulations;

22. Any visiting or home care nurse licensed by the Board of Nursing acting in compliance with the written order of the attending physician not to resuscitate a patient in the event of cardiac or respiratory arrest;

23. Any commissioned or contract medical officer of the army, navy, coast guard or air force rendering services voluntarily and without compensation while deemed to be licensed pursuant § 54.1-106;

24. Any provider of a chemical dependency treatment program who is certified as an "acupuncture detoxification specialist" by the National Acupuncture Detoxification Association or an equivalent certifying body, from administering auricular acupuncture treatment under the appropriate supervision of a licensed physician acupuncturist or licensed acupuncturist;

25. Any employee of any adult care residence who is certified in cardiopulmonary resuscitation (CPR) acting in compliance with the patient's individualized service plan and with the written order of the attending physician not to resuscitate a patient in the event of cardiac or respiratory arrest; or

26. Any person working as a health assistant under the direction of a licensed medical or osteopathic doctor within the Department of Corrections, the Department of Juvenile Justice or local correctional facilities.

§ 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 et seq.) of Chapter 8 of Title 32.1.

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

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

~~"Emergency Medical Services Do Not Resuscitate Order" means a written attending physician's order in a form approved by the Board of Health which authorizes qualified emergency medical service personnel or hospital emergency department health care providers, with the consent of the patient or the person authorized to consent for the patient, 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. Emergency Medical Services Do Not Resuscitate Orders shall not authorize the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.~~

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, mental retardation, or any other mental or physical disorder which precludes communication or impairs judgment and which has been diagnosed and certified in writing by his attending physician and a second physician or licensed clinical psychologist after personal examination of such patient, to make an informed decision about providing, withholding or withdrawing a specific medical treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed medical decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

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

"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 treatment is to be rendered or withheld.

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

"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 a person who is not a spouse or blood relative of the patient. 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.

§ 54.1-2987.1. Do Not Resuscitate Orders.

Qualified emergency medical services personnel or hospital emergency department health care providers shall be authorized to follow Emergency Medical Services Do Not Resuscitate Orders pertaining to qualified patients in the pre-hospital or hospital emergency department setting in accordance with regulations promulgated by the Board of Health, if the order available to such personnel is in a form approved by the Board of Health.

For the purposes of this section, an Emergency Medical Services A Do Not Resuscitate Order may be issued for qualified patients by an attending physician for his patient who are individuals diagnosed to be afflicted with a terminal condition or patients for whom attending physicians have he has otherwise issued a Do Not Resuscitate Order and only with the consent of the patient or, if the patient is incapable of making an informed decision regarding consent for such an Order, of the person authorized to consent on the patient's behalf.

This section shall not authorize emergency medical personnel or hospital emergency department health care providers to follow an Emergency Medical Services a Do Not Resuscitate Order for any patient (i) who is able to, and does, express or (ii) if the patient is incapable of making an informed decision, the person authorized to consent on the patient's behalf expresses to such emergency medical services personnel or hospital emergency department health care providers the desire to be resuscitated prior to cardiac or respiratory arrest. The expression of such desire to be resuscitated prior to cardiac or respiratory arrest shall constitute revocation of the Order; however, a new Order may be issued upon consent of the patient or the person authorized to consent on the patient's behalf.

Nothing in this section or the definition of Emergency Medical Services Do Not Resuscitate Orders provided in § 54.1-2982 shall be construed to limit the issuance of or the authorization of physicians and those persons designated in § 54.1-2901 to follow Do Not Resuscitate Orders other than Emergency Medical Services Do Not Resuscitate Orders issued in accordance with this section by an attending physician shall be valid in any prehospital setting or facility licensed by the Board of Health or operated or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services or operated or licensed or owned by another state agency unless consent to such Do Not Resuscitate Order has been revoked by the patient or the person authorized to consent for the patient.

Qualified emergency medical services personnel shall be authorized to follow Do Not Resuscitate Orders pertaining to patients in the prehospital setting in accordance with this section and the regulations promulgated by the Board of Health, if the Order available to such personnel is in a form approved by the Board of Health. Emergency medical services personnel shall not, however, be authorized to withhold other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.

For the purposes of this section, "person authorized to consent on the patient's behalf" means any person authorized by law to consent on behalf of the patient incapable of making an informed decision.

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

A health care facility, physician or other person acting under the direction of a physician shall not be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of issuing a Do Not Resuscitate Order or the withholding or the withdrawal of life-prolonging procedures under authorization or consent obtained in accordance with this article. No person or facility providing, withholding or withdrawing treatment or physician issuing a Do Not Resuscitate Order under authorization or consent obtained pursuant to this article shall incur liability arising out of a claim to the extent the claim is based on lack of authorization or consent or

authorization for such action.

A person who authorizes or consents to the providing, withholding or withdrawal of life-prolonging procedures in accordance with a qualified patient's advance directive or as provided in § 54.1-2986 or a *Do Not Resuscitate Order* pursuant to § 54.1-2987.1 shall not be subject, solely on the basis of that authorization or consent, to (i) criminal prosecution or civil liability for such action or (ii) liability for the cost of treatment solely on the basis of that authorization.

The provisions of this section shall apply unless it is shown by a preponderance of the evidence that the person authorizing or effectuating the withholding or withdrawal of life-prolonging procedures, or issuing, consenting to, making or following an ~~Emergency Medical Services~~ *Do Not 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 provided in § 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 *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 by a competent adult, attending physician or person authorized to consent on the patient's behalf. ~~Authorization~~ *Issuance of a Do Not Resuscitate Order and authorization or consent* for the providing, withholding or withdrawal of life-prolonging procedures in accordance with this article shall be presumed to have been made in good faith.

§ 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 ~~Emergency Medical Services~~ *Do Not Resuscitate Order* of another without the declarant's or patient's consent or who falsifies or forges a revocation of the advance directive or ~~Emergency Medical Services~~ *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 an ~~Emergency Medical Services~~ *Do Not Resuscitate Order* shall be guilty of a Class 6 felony.

Any person who falsifies or forges the advance directive or ~~Emergency Medical Services~~ *Do Not Resuscitate Order* of another, or willfully conceals or withholds personal knowledge of the revocation of an advance directive or ~~Emergency Medical Services~~ *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 an ~~Emergency Medical Services~~ *Do Not Resuscitate Order*, 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.