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HOUSE BILL NO. 1090

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions on February 3, 2000)

(Patron Prior to Substitute—Delegate Bryant)

A BILL to amend and reenact §§ 32.1-127, 32.1-127.1, 32.1-127.1:03, 32.1-287, 32.1-289, 32.1-290, 32.1-292.1, 46.2-342, 54.1-2984, and 54.1-2986 of the Code of Virginia, relating to organ donations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-127, 32.1-127.1, 32.1-127.1:03, 32.1-287, 32.1-289, 32.1-290, 32.1-292.1, 46.2-342, 54.1-2984, and 54.1-2986 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-127. Regulations.

A. The regulations promulgated by the Board to carry out the provisions of this article shall be in substantial conformity to the standards of health, hygiene, sanitation, construction and safety as established and recognized by medical and health care professionals and by specialists in matters of public health and safety, including health and safety standards established under provisions of Title XVIII and Title XIX of the Social Security Act, and to the provisions of Article 2 (§ 32.1-138 et seq.) of this chapter.

B. Such regulations:

1. Shall include minimum standards for (i) the construction and maintenance of hospitals, nursing homes and certified nursing facilities to assure the environmental protection and the life safety of its patients and employees and the public; (ii) the operation, staffing and equipping of hospitals, nursing homes and certified nursing facilities; (iii) qualifications and training of staff of hospitals, nursing homes and certified nursing facilities, except those professionals licensed or certified by the Department of Health Professions; and (iv) conditions under which a hospital or nursing home may provide medical and nursing services to patients in their places of residence;

2. Shall provide that at least one physician who is licensed to practice medicine in this Commonwealth shall be on call at all times, though not necessarily physically present on the premises, at each hospital which operates or holds itself out as operating an emergency service;

3. May classify hospitals and nursing homes by type of specialty or service and may provide for licensing hospitals and nursing homes by bed capacity and by type of specialty or service;

4. Shall also require that each hospital establish a protocol for organ donation, in compliance with federal law and the regulations of the Health Care Financing Administration (HCFA), particularly 42 CFR § 482.45. Each hospital shall have an agreement with an organ procurement organization designated in HCFA regulations for routine contact protocol which ensures that contact, whereby the provider's designated organ procurement organization certified by HCFA (i) is notified in a timely manner of all deaths or imminent deaths of patients in the hospital; and (ii) is authorized to determine the suitability of the decedent or patient for organ donation and, in the absence of a similar arrangement with any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks, the suitability for tissue and eye donation. The hospital shall also have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes to ensure that all usable tissues and eyes are obtained from potential donors and to avoid interference with organ procurement. The protocol shall ensure that the hospital collaborates with the designated organ procurement organization to inform the family of each potential donor of the option to donate organs, tissues, or eyes or to decline to donate. The individual making contact with the family shall have completed a course in the methodology for approaching potential donor families and requesting organ or tissue donation that (i) is offered or approved by the organ procurement organization and designed in conjunction with the tissue and eye bank community, and (ii) encourages discretion and sensitivity according to the specific circumstances, views, and beliefs of the relevant family. In addition, the hospital shall work cooperatively with the designated organ procurement organization in educating the staff responsible for contacting the organ procurement organization's personnel on donation issues, the proper review of death records to improve identification of potential donors, and the proper procedures for maintaining potential donors while necessary testing and placement of potential donated organs, tissues, and eyes takes place. This process shall be followed, without exception, unless the family of suitable organ and tissue donors are offered the opportunity by the relevant decedent or patient has expressed opposition to organ donation, the chief administrative officer of the hospital or his designee to consider organ, tissue and eye donation knows of such opposition, and no donor card or other relevant document, such as an advance directive, can be found;

5. Shall require that each hospital that provides obstetrical services establish a protocol for admission

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60 or transfer of any pregnant woman who presents herself while in labor;

61 6. Shall also require that each licensed hospital develop and implement a protocol requiring written  
62 discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall  
63 require that the discharge plan be discussed with the patient and that appropriate referrals for the mother  
64 and the infant be made and documented. Appropriate referrals may include, but need not be limited to,  
65 treatment services, comprehensive early intervention services for infants and toddlers with disabilities  
66 and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C.  
67 § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to  
68 the extent possible, the father of the infant and any members of the patient's extended family who may  
69 participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant  
70 to § 54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to  
71 federal law restrictions, the community services board of the jurisdiction in which the woman resides to  
72 appoint a discharge plan manager. The community services board shall implement and manage the  
73 discharge plan;

74 7. Shall require that each nursing home and certified nursing facility fully disclose to the applicant  
75 for admission the home's or facility's admissions policies, including any preferences given;

76 8. Shall require that each licensed hospital establish a protocol relating to the rights and  
77 responsibilities of patients which shall include a process reasonably designed to inform patients of such  
78 rights and responsibilities. Such rights and responsibilities of patients, a copy of which shall be given to  
79 patients on admission, shall be based on Joint Commission on Accreditation of Healthcare Organizations'  
80 standards; and

81 9. Shall establish standards and maintain a process for designation of levels or categories of care in  
82 neonatal services according to an applicable national or state-developed evaluation system. Such  
83 standards may be differentiated for various levels or categories of care and may include, but need not be  
84 limited to, requirements for staffing credentials, staff/patient ratios, equipment, and medical protocols.

85 C. Upon obtaining the appropriate license, if applicable, licensed hospitals, nursing homes, and  
86 certified nursing facilities may operate adult day care centers.

87 D. All facilities licensed by the Board pursuant to this article which provide treatment or care for  
88 hemophiliacs and, in the course of such treatment, stock clotting factors, shall maintain records of all lot  
89 numbers or other unique identifiers for such clotting factors in order that, in the event the lot is found to  
90 be contaminated with an infectious agent, those hemophiliacs who have received units of this  
91 contaminated clotting factor may be apprised of this contamination. Facilities which have identified a lot  
92 which is known to be contaminated shall notify the recipient's attending physician and request that he  
93 notify the recipient of the contamination. If the physician is unavailable, the facility shall notify by mail,  
94 return receipt requested, each recipient who received treatment from a known contaminated lot at the  
95 individual's last known address.

96 § 32.1-127.1. Immunity from liability for routine contact for organ and tissue donation.

97 Any chief administrative officer of a hospital or his designee who ~~performs~~ *administers* the routine  
98 ~~contact~~ *referral* required by § 32.1-127 and any representative of any organ procurement organization or  
99 eye or tissue bank who ~~requests~~ *receives notice of a death or imminent death, determines the suitability*  
100 *of the decedent or patient for organ donation, makes contact with the family of a decedent or patient to*  
101 *request* the donation of organs, tissues or eyes, or assists or performs the removal of any donated  
102 organs, tissues or eyes shall be immune from civil liability for any act, decision, or omission or  
103 statement made in accordance with the provisions of § 32.1-127 ~~and~~ the regulations of the Board, ~~and~~  
104 *the provisions of the Health Care Financing Administration's regulations on routine referral and organ*  
105 *donation*, unless he was grossly negligent or acted in bad faith or with malicious intent.

106 § 32.1-127.1:03. Patient health records privacy.

107 A. There is hereby recognized a patient's right of privacy in the content of a patient's medical record.  
108 Patient records are the property of the provider maintaining them, and, except when permitted by this  
109 section or by another provision of state or federal law, no provider, or other person working in a health  
110 care setting, may disclose the records of a patient.

111 Patient records shall not be removed from the premises where they are maintained without the  
112 approval of the provider, except in accordance with a court order or subpoena consistent with § 8.01-413  
113 C or with this section or in accordance with the regulations relating to change of ownership of patient  
114 records promulgated by a health regulatory board established in Title 54.1.

115 No person to whom disclosure of patient records was made by a patient or a provider shall redisclose  
116 or otherwise reveal the records of a patient, beyond the purpose for which such disclosure was made,  
117 without first obtaining the patient's specific consent to such redisclosure. This redisclosure prohibition  
118 shall not, however, prevent (i) any provider who receives records from another provider from making  
119 subsequent disclosures as permitted under this section or (ii) any provider from furnishing records and  
120 aggregate or other data, from which patient-identifying prescription information has been removed,  
121 encoded or encrypted, to qualified researchers, including, but not limited to, pharmaceutical

122 manufacturers and their agents or contractors, for purposes of clinical, pharmaco-epidemiological,  
123 pharmaco-economic, or other health services research.

124 B. As used in this section:

125 "Agent" means a person who has been appointed as a patient's agent under a power of attorney for  
126 health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

127 "Guardian" means a court-appointed guardian of the person.

128 "Health services" includes, but is not limited to, examination, diagnosis, evaluation, treatment,  
129 pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind.

130 "Parent" means a biological, adoptive or foster parent.

131 "Patient" means a person who is receiving or has received health services from a provider.

132 "Patient-identifying prescription information" means all prescriptions, drug orders or any other  
133 prescription information that specifically identifies an individual patient.

134 "Provider" shall have the same meaning as set forth in the definition of "health care provider" in  
135 § 8.01-581.1, except that state-operated facilities shall also be considered providers for the purposes of  
136 this section. Provider shall also include all persons who are licensed, certified, registered or permitted by  
137 any of the health regulatory boards within the Department of Health Professions, except persons  
138 regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

139 "Record" means any written, printed or electronically recorded material maintained by a provider in  
140 the course of providing health services to a patient concerning the patient and the services provided.  
141 "Record" also includes the substance of any communication made by a patient to a provider in  
142 confidence during or in connection with the provision of health services to a patient or information  
143 otherwise acquired by the provider about a patient in confidence and in connection with the provision of  
144 health services to the patient.

145 C. The provisions of this section shall not apply to any of the following:

146 1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia  
147 Workers' Compensation Act; or

148 2. Except where specifically provided herein, the records of minor patients.

149 D. Providers may disclose the records of a patient:

150 1. As set forth in subsection E of this section, pursuant to the written consent of the patient or in the  
151 case of a minor patient, his custodial parent, guardian or other person authorized to consent to treatment  
152 of minors pursuant to § 54.1-2969; also, in emergency cases or situations where it is impractical to  
153 obtain the patient's written consent, pursuant to the patient's oral consent for a provider to discuss the  
154 patient's records with a third party specified by the patient;

155 2. In compliance with a subpoena issued in accord with subsection H of this section, pursuant to  
156 court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C  
157 of § 8.01-413;

158 3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure  
159 is reasonably necessary to establish or collect a fee or to defend a provider or the provider's employees  
160 or staff against any accusation of wrongful conduct; also as required in the course of an investigation,  
161 audit, review or proceedings regarding a provider's conduct by a duly authorized law-enforcement,  
162 licensure, accreditation, or professional review entity;

163 4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

164 5. In compliance with the provisions of § 8.01-413;

165 6. As required or authorized by any other provision of law including contagious disease, public  
166 safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those  
167 contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-276.5, 32.1-283, 32.1-283.1, 37.1-98.2,  
168 53.1-40.10, 54.1-2403.3, 54.1-2906, 54.1-2907, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.1-55.3  
169 and 63.1-248.11;

170 7. Where necessary in connection with the care of the patient, *including in the implementation of a*  
171 *hospital routine contact process*;

172 8. In the normal course of business in accordance with accepted standards of practice within the  
173 health services setting; however, the maintenance, storage, and disclosure of the mass of prescription  
174 dispensing records maintained in a pharmacy registered or permitted in Virginia shall only be  
175 accomplished in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412;

176 9. When the patient has waived his right to the privacy of the medical records;

177 10. When examination and evaluation of a patient are undertaken pursuant to judicial or  
178 administrative law order, but only to the extent as required by such;

179 11. To the guardian ad litem in the course of a guardianship proceeding of an adult patient  
180 authorized under §§ 37.1-128.1, 37.1-128.2 and 37.1-132;

181 12. To the attorney appointed by the court to represent a patient in a civil commitment proceeding  
182 under § 37.1-67.3;

183 13. To the attorney and/or guardian ad litem of a minor patient who represents such minor in any  
184 judicial or administrative proceeding, provided that the court or administrative hearing officer has  
185 entered an order granting the attorney or guardian ad litem this right and such attorney or guardian ad  
186 litem presents evidence to the provider of such order;

187 14. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's records in  
188 accord with § 9-173.12;

189 15. To an agent appointed under a patient's power of attorney or to an agent or decision maker  
190 designated in a patient's advance directive for health care *or for decisions on anatomical gifts and*  
191 *organ, tissue or eye donation* or to any other person consistent with the provisions of the Health Care  
192 Decisions Act (§ 54.1-2981 et seq.);

193 16. To third-party payors and their agents for purposes of reimbursement;

194 17. As is necessary to support an application for receipt of health care benefits from a governmental  
195 agency or as required by an authorized governmental agency reviewing such application or reviewing  
196 benefits already provided;

197 18. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership  
198 or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

199 19. In accord with § 54.1-2400.1 B, to communicate a patient's specific and immediate threat to  
200 cause serious bodily injury or death of an identified or readily identifiable person;

201 20. To the patient, except as provided in subsections E and F of this section and subsection B of  
202 § 8.01-413;

203 21. In the case of substance abuse records, when permitted by and in conformity with requirements  
204 of federal law found in 42 U.S.C. 290dd-2 and 42 C.F.R. Part 2;

205 22. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the  
206 adequacy or quality of professional services or the competency and qualifications for professional staff  
207 privileges;

208 23. If the records are those of a deceased or mentally incapacitated patient to the personal  
209 representative or executor of the deceased patient or the legal guardian or committee of the incompetent  
210 or incapacitated patient or if there is no personal representative, executor, legal guardian or committee  
211 appointed, to the following persons in the following order of priority: a spouse, an adult son or  
212 daughter, either parent, an adult brother or sister, or any other relative of the deceased patient in order  
213 of blood relationship; and

214 24. For the purpose of conducting record reviews of inpatient hospital deaths to promote  
215 identification of all potential organ, eye, and tissue donors in conformance with the requirements of  
216 applicable federal law and regulations, including 42 C. F.R. § 482.45, (i) to the provider's designated  
217 organ procurement organization certified by the United States Health Care Financing Administration and  
218 (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the  
219 American Association of Tissue Banks.

220 E. Requests for copies of medical records shall (i) be in writing, dated and signed by the requester;  
221 (ii) identify the nature of the information requested; and (iii) include evidence of the authority of the  
222 requester to receive such copies and identification of the person to whom the information is to be  
223 disclosed. Within fifteen days of receipt of a request for copies of medical records, the provider shall do  
224 one of the following: (i) furnish such copies to any requester authorized to receive them; (ii) inform the  
225 requester if the information does not exist or cannot be found; (iii) if the provider does not maintain a  
226 record of the information, so inform the requester and provide the name and address, if known, of the  
227 provider who maintains the record; or (iv) deny the request (a) under subsection F, (b) on the grounds  
228 that the requester has not established his authority to receive such records or proof of his identity, or (c)  
229 as otherwise provided by law. Procedures set forth in this section shall apply only to requests for  
230 records not specifically governed by other provisions of this Code, federal law or state or federal  
231 regulation.

232 F. Except as provided in subsection B of § 8.01-413, copies of a patient's records shall not be  
233 furnished to such patient or anyone authorized to act on the patient's behalf where the patient's attending  
234 physician or the patient's clinical psychologist has made a part of the patient's record a written statement  
235 that, in his opinion, the furnishing to or review by the patient of such records would be injurious to the  
236 patient's health or well-being. If any custodian of medical records denies a request for copies of records  
237 based on such statement, the custodian shall permit examination and copying of the medical record by  
238 another such physician or clinical psychologist selected by the patient, whose licensure, training and  
239 experience relative to the patient's condition are at least equivalent to that of the physician or clinical  
240 psychologist upon whose opinion the denial is based. The person or entity denying the request shall  
241 inform the patient of the patient's right to select another reviewing physician or clinical psychologist  
242 under this subsection who shall make a judgment as to whether to make the record available to the  
243 patient. Any record copied for review by the physician or clinical psychologist selected by the patient  
244 shall be accompanied by a statement from the custodian of the record that the patient's attending

245 physician or clinical psychologist determined that the patient's review of his record would be injurious to  
246 the patient's health or well-being.

247 G. A written consent to allow release of patient records may, but need not, be in the following form:

248 **CONSENT TO RELEASE OF CONFIDENTIAL HEALTH CARE**  
249 **INFORMATION**

250 Patient Name .....

251 Provider Name .....

252 Person, agency or provider to whom disclosure is to be made .....

253 Information or Records to be disclosed .....

254 As the person signing this consent, I understand that I am giving my permission to the above-named  
255 provider or other named third party for disclosure of confidential health care records. I also understand  
256 that I have the right to revoke this consent, but that my revocation is not effective until delivered in  
257 writing to the person who is in possession of my records. A copy of this consent and a notation  
258 concerning the persons or agencies to whom disclosure was made shall be included with my original  
259 records. The person who receives the records to which this consent pertains may not redisclose them to  
260 anyone else without my separate written consent unless such recipient is a provider who makes a  
261 disclosure permitted by law.

262 This consent expires on (date) .....

263 Signature of Patient .... Date .....

264 H. 1. No party to an action shall request the issuance of a subpoena duces tecum for an opposing  
265 party's medical records unless a copy of the request for the subpoena is provided to opposing counsel or  
266 the opposing party if they are pro se, simultaneously with filing the request. No party to an action shall  
267 request the issuance of a subpoena duces tecum for the medical records of a nonparty witness unless a  
268 copy of the request for the subpoena is provided to the nonparty witness simultaneously with filing the  
269 request.

270 In instances where medical records being subpoenaed are those of a pro se party or nonparty witness,  
271 the party requesting the issuance of the subpoena shall deliver to the pro se party or nonparty witness  
272 together with the copy of the request for subpoena, a statement informing them of their rights and  
273 remedies. The statement shall include the following language and the heading shall be in boldface  
274 capital letters:

275 **NOTICE TO PATIENT**

276 The attached Request for Subpoena means that (insert name of party requesting subpoena) has asked  
277 the court to issue a subpoena to your doctor or other health care providers (names of health care  
278 providers inserted here) requiring them to produce your medical records. Your doctor or other health  
279 care provider is required to respond by providing a copy of your medical records. If you believe your  
280 records should not be disclosed and object to their disclosure, you have the right to file a motion with  
281 the clerk of the court to quash the subpoena. You may contact the clerk's office to determine the  
282 requirements that must be satisfied when filing a motion to quash and you may elect to contact an  
283 attorney to represent your interest. If you elect to file a motion to quash, it must be filed as soon as  
284 possible before the provider sends out the records in response to the subpoena. If you elect to file a  
285 motion to quash, you must notify your doctor or other health care provider(s) that you are filing the  
286 motion so that the provider knows to send the records to the clerk of court in a sealed envelope or  
287 package for safekeeping while your motion is decided.

288 2. Any party filing a request for a subpoena duces tecum for a patient's medical records shall include  
289 a Notice to Providers in the same part of the request where the provider is directed where and when to  
290 return the records. Such notice shall be in boldface capital letters and shall include the following  
291 language:

292 **NOTICE TO PROVIDERS**

293 **IF YOU RECEIVE NOTICE THAT YOUR PATIENT HAS FILED A MOTION TO QUASH**  
294 **(OBJECTING TO) THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA,**  
295 **SEND THE RECORDS ONLY TO THE CLERK OF THE COURT WHICH ISSUED THE**  
296 **SUBPOENA USING THE FOLLOWING PROCEDURE: PLACE THE RECORDS IN A SEALED**  
297 **ENVELOPE AND ATTACH TO THE SEALED ENVELOPE A COVER LETTER TO THE CLERK**  
298 **OF COURT WHICH STATES THAT CONFIDENTIAL HEALTH CARE RECORDS ARE**  
299 **ENCLOSED AND ARE TO BE HELD UNDER SEAL PENDING THE COURT'S RULING ON THE**  
300 **MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER**  
301 **SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE**  
302 **COURT.**

303 3. Health care providers shall provide a copy of all records as required by a subpoena duces tecum  
304 or court order for such medical records. If the health care provider has, however, actual receipt of notice  
305 that a motion to quash the subpoena has been filed or if the health care provider files a motion to quash

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306 the subpoena for medical records, then the health care provider shall produce the records to the clerk of  
 307 the court issuing the subpoena, where the court shall place the records under seal until a determination  
 308 is made regarding the motion to quash. The securely sealed envelope shall only be opened on order of  
 309 the judge. In the event the court grants the motion to quash, the records shall be returned to the health  
 310 care provider in the same sealed envelope in which they were delivered to the court. In the event that a  
 311 judge orders the sealed envelope to be opened to review the records in camera, a copy of the judge's  
 312 order shall accompany any records returned to the provider. The records returned to the provider shall  
 313 be in a securely sealed envelope.

314 4. It is the duty of any party requesting a subpoena duces tecum for medical records to determine  
 315 whether the patient whose records are sought is pro se or a nonparty. Any request for a subpoena duces  
 316 tecum for the medical records of a nonparty or of a pro se party shall direct the provider (in boldface  
 317 type) not to produce the records until ten days after the date on which the provider is served with the  
 318 subpoena duces tecum and shall be produced no later than twenty days after the date of such service.

319 In the event that the individual whose records are being sought files a motion to quash the subpoena,  
 320 the court shall decide whether good cause has been shown by the discovering party to compel disclosure  
 321 of the patient's private records over the patient's objections. In determining whether good cause has been  
 322 shown, the court shall consider (i) the particular purpose for which the information was collected; (ii)  
 323 the degree to which the disclosure of the records would embarrass, injure, or invade the privacy of the  
 324 individual; (iii) the effect of the disclosure on the individual's future health care; (iv) the importance of  
 325 the information to the lawsuit or proceeding; and (v) any other relevant factor.

326 The provisions of this subsection have no application to subpoenas for medical records requested  
 327 under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation,  
 328 audit, review or proceedings regarding a provider's conduct. The provisions of this subsection apply to  
 329 the medical records of both minors and adults.

330 A subpoena for substance abuse records must conform to the requirements of federal law found in 42  
 331 C.F.R. Part 2, Subpart E.

332 Providers may testify about the medical records of a patient in compliance with §§ 8.01-399 and  
 333 8.01-400.2.

334 § 32.1-287. Authority of Chief Medical Examiner or deputies to provide organs, tissues and pituitary  
 335 glands for transplant or therapy; immunity from liability for nonnegligent compliance.

336 ~~Provided~~ Upon consent has been *being* obtained, the Chief Medical Examiner or any of his assistant  
 337 chief medical examiners may provide such body organ, gland, eye or other tissue to the transplanting  
 338 surgeon or the physician prescribing therapy or the appropriate tissue, organ or eye bank operating in  
 339 accordance with the laws of Virginia if providing such body organ, gland, eye, or other tissue will not  
 340 interfere with the subsequent course of the investigation or autopsy ~~or alter the postmortem facial~~  
 341 ~~appearance of the deceased.~~

342 However, if no consent has been obtained by the person or institution having first or original custody  
 343 of the dead body because the next of kin cannot be contacted as provided in § 32.1-283, then the Chief  
 344 Medical Examiner or an assistant chief medical examiner may remove and preserve the pituitary gland.  
 345 If consent has not been obtained before the body is removed from custody of the Chief Medical  
 346 Examiner or an assistant chief medical examiner then the pituitary gland shall be replaced.

347 There shall be no civil or criminal liability on the part of, and no cause of action for damages shall  
 348 arise against, the Chief Medical Examiner or an assistant chief medical examiner for nonnegligent  
 349 compliance with the provisions of this section.

350 Nothing herein shall be construed to interfere with the autopsy procedure or with the routine *contact*  
 351 *with the decedent's family and the obtaining of consent for removal of organs as conducted by surgical*  
 352 ~~teams or others in compliance with § 32.1-127.~~

353 § 32.1-289. Definitions.

354 As used in this article:

355 "Anatomical gift" or "organ donation" means a donation of *organs, tissues, or eyes or all of part* of  
 356 a human body to take effect upon or after death.

357 "Decedent" means a deceased individual and includes a stillborn infant or fetus.

358 "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle driver's or  
 359 chauffeur's license *or the record of the individual's motor vehicle driver's or chauffeur's license*, a will,  
 360 *an advance directive*, or other writing used to make an *organ donation or an anatomical gift*.

361 "Donor" means an individual who makes a *donation of organs, tissues, or eyes or an anatomical gift*  
 362 of all ~~of part~~ of his body.

363 "*Eye Bank*" means an agency certified by the Eye Bank Association of America operating in this  
 364 Commonwealth.

365 "Hospital" means a facility licensed, accredited or approved as a hospital under the laws of any state  
 366 *or certified by the Health Care Financing Administration*, and a hospital operated by the United States  
 367 government, a state, or a subdivision thereof which is not required to be licensed under state laws.

368 "Organ procurement organization" means an agency certified by the United States Health Care  
369 Financing Administration as an organ procurement organization.

370 "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

371 "Person" includes, in addition to the entities enumerated in § 32.1-3, a government and a  
372 governmental subdivision or agency.

373 "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice under the  
374 laws of any state.

375 "Procurement organization" means a person licensed, accredited, or approved under the laws of any  
376 state for procurement, distribution, or storage of human bodies or parts.

377 "State" means any state, district, commonwealth, territory, insular possession, or other area subject to  
378 the legislative authority of the United States of America.

379 "Tissue Bank" means an agency certified by the American Association of Tissue Banks operating in  
380 this Commonwealth.

381 § 32.1-290. Persons who may execute anatomical gift or make organ donations; when gift may be  
382 executed; examination of body authorized; rights of donee paramount.

383 A. Any ~~competent individual of sound mind~~ who is at least eighteen years of age or individual under  
384 eighteen who ~~is of sound mind and~~ has the written consent of his parent or legal guardian may (i) make  
385 an anatomical gift for any purposes specified in § 32.1-291 or organ, tissue or eye donation, (ii) limit an  
386 anatomical gift to one or more of those purposes or any organ, tissue or eye donation or (iii) refuse to  
387 make an anatomical gift except that or organ, tissue or eye donation; however, individuals under  
388 eighteen ~~make such a refusal may refuse~~ without the written consent of their parent or legal guardian.

389 B. An anatomical gift or organ, tissue or eye donation by a donor may be made by a document of  
390 gift signed by the donor and execution of a document of gift as authorized by this section shall be  
391 sufficient to effect such a gift. If the donor cannot sign, the document of gift must be signed by another  
392 individual and by two witnesses, all of whom have signed at the direction and in the presence of the  
393 donor and of each other, and state that it has been so signed.

394 An anatomical gift ~~Organ, tissues, and eye donations~~ may also be made by a donor in accordance  
395 with the procedures established by the Department of Motor Vehicles, pursuant to § 46.2-342, and in an  
396 advance directive as provided in the Health Care Decisions Act (§ 54.1-2981 et seq.). Revocation,  
397 suspension, expiration or cancellation of the donor's driver's license shall not affect the anatomical gift  
398 or organ, tissue or eye donation.

399 C. A document of gift may designate a ~~physician or surgeon who specializes in organ procurement~~  
400 ~~or organ transplantation named individual~~, or a Health Care Finance Administration federally designated  
401 organ procurement organization named in a memorandum of understanding with the hospital. In the  
402 absence of a designation or if the designee is not available, the donee or other person authorized to  
403 accept the anatomical gift or organ, tissue or eye donation may employ or authorize any physician or  
404 surgeon, and, in the case of a gift of the eyes, any funeral service licensee or embalmer licensed in this  
405 Commonwealth or any technician any technician or funeral service licensee or embalmer licensed in  
406 this Commonwealth who can document the successful completion of a course provided by any eye bank  
407 in this Commonwealth which is accredited by the Eye Bank Association of America or the American  
408 Association of Tissue Banks.

409 In the case of a gift of skin, temporal bone or other bone, in the absence of a designation by the  
410 donor or if such designee is not available, the donee or other person authorized to accept the gift may  
411 employ or authorize to perform the appropriate procedures: (i) any physician or surgeon or (ii) any  
412 technician approved by the Life Net as qualified to perform the act of skin or bone harvesting.

413 In the case of a gift of the brain to be used for confirmation of diagnosis and research into the  
414 etiology of any organic brain disease, the donee or other person authorized to receive the organ may  
415 employ or authorize a laboratory technician trained by a licensed neuropathologist to recover the brain.

416 Any person authorized by this section to perform eye enucleation, or recovery of skin, temporal bone  
417 and other bone or tissue or vascular organs may draw blood from the donor and order such tests as may  
418 be appropriate to protect his health and the health of the potential recipients of the tissues or organs.

419 A surgeon, physician, organ procurement organization employee, funeral service licensee, embalmer,  
420 technician or ophthalmic assistant acting in accordance with the terms of this section shall not have any  
421 liability, civil or criminal, for the eye enucleation, recovery of the brain or other organ or harvesting of  
422 skin or bones upon a decedent.

423 D. An anatomical gift or organ, tissue or eye donation by will takes effect upon death of the  
424 testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary  
425 purposes, the validity of the anatomical gift is unaffected or organ, tissue or eye donation shall remain  
426 valid, and no person shall refuse to comply with such gift or donation. The donor of an anatomical gift  
427 or organ, tissue or eye donation made by will may amend or revoke the gift in the manner provided for  
428 amendment or revocation of wills, or as provided in this section.

429 E. An anatomical gift or organ, tissue or eye donation, regardless of the document making such gift  
 430 or donation, that is not revoked by the donor before death is irrevocable and does not require the  
 431 consent or concurrence of any person after the donor's death for the eye enucleation, recovery of the  
 432 brain or other organ or harvesting of skin or bones of the donor.

433 A donor may amend or revoke an anatomical gift or donor document, not made by will, only by (i)  
 434 a signed statement, (ii) an oral statement made in the presence of two individuals, (iii) any form of  
 435 communication during a terminal illness or injury addressed to a physician or surgeon or, (iv) the  
 436 delivery of a signed statement to a specified donee to whom a document of gift has been delivered, or  
 437 (v) compliance with the relevant law, e.g., the Uniform Donor Document pursuant to § 46.2-342 or the  
 438 Health Care Decisions Act (§ 54.1-2981 et seq.).

439 An anatomical gift that is not revoked by the donor before death is irrevocable and does not require  
 440 the consent or concurrence of any person after the donor's death.

441 F. An individual may refuse to make an anatomical gift of the individual's body or part organ, tissue  
 442 or eye donation by (i) a writing signed in the same manner as a document of gift, (ii) a statement  
 443 attached to a driver's license or driver's record, or (iii) any other writing used to identify the individual  
 444 as refusing to make an anatomical gift or organ, tissue or eye donation. During a terminal illness or  
 445 injury, the refusal may be an oral statement or other form of communication.

446 G. In the absence of contrary indications by the donor, (i) an anatomical gift of a part a specific  
 447 organ donation is neither a refusal to give other parts organs, tissues, or the eyes nor a limitation on an  
 448 anatomical gift or organ, tissue or eye donation under § 32.1-290.1 or on a the removal or release of  
 449 other parts organs, tissues or the eyes under § 32.1-290.1 and (ii) a revocation or amendment of an  
 450 anatomical gift or organ, tissue or eye donation is not a refusal to make another anatomical gift or  
 451 organ, tissue or eye donation. If the donor intends a revocation to be a refusal to make an anatomical  
 452 gift or organ, tissue or eye donation in the future, the donor shall make the refusal pursuant to  
 453 subsection F.

454 § 32.1-292.1. Routine search for donor information; organ procurement agencies to file protocols.

455 A. The following persons may make a reasonable search for a document of gift or other information  
 456 identifying the bearer as a donor or as an individual who has refused to make an anatomical gift or  
 457 organ, tissue or eye donation:

458 1. A law-enforcement officer, fireman, paramedic or other emergency rescuer finding an individual  
 459 who the searcher believes is dead; and

460 2. A hospital, upon the admission of an individual at or near the time of death, if there is not  
 461 immediately available any other source of that information, in accordance with the protocol required by  
 462 § 32.1-127.

463 Each licensed hospital shall establish an organ procurement for transplant protocol as required by  
 464 regulations of the Board adopted pursuant to § 32.1-127.

465 B. Any law-enforcement officer may conduct an administrative search of the subject's Department of  
 466 Motor Vehicles driver record to determine the person's authorization for organ donation or refusal of  
 467 organ donation. A physical search pursuant to subsection A may be conducted at or near the time of  
 468 death or hospital admission and shall be limited to those personal effects of the subject where a driver's  
 469 license may be reasonably stored. Any information, document, tangible objects or other items discovered  
 470 during such search shall be used solely for the purpose of ascertaining whether the subject intends to  
 471 make an anatomical gift or organ, tissue or eye donation, and in no event shall any such discovered  
 472 material be admissible in any subsequent criminal or civil proceeding.

473 § 46.2-342. What license to contain; organ donor information; Uniform Donor Document.

474 A. Every license issued under this chapter shall bear:

475 1. For new, renewal, or replacement licenses issued on or after September 1, 1995, either (i) a  
 476 license number which shall be the same as the licensee's social security number or (ii) a control number  
 477 which shall be assigned by the Department to the licensee if he either (i) has no social security number  
 478 or (ii) requests in writing on a form prescribed by the Commissioner that his social security number not  
 479 be shown on the license;

480 2. A color photograph of the licensee;

481 3. The licensee's name, year, month, and date of birth;

482 4. The licensee's address;

483 5. A brief description of the licensee for the purpose of identification;

484 6. A space for the signature of the licensee; and

485 7. Any other information deemed necessary by the Commissioner for the administration of this title.

486 No abbreviated names or nicknames shall be shown on any license.

487 A1. At the option of the licensee, the address shown on the license may be either the post office  
 488 box, business, or residence address of the licensee. However, regardless of which address is shown on  
 489 the license, the licensee shall supply the Department with his residence address. This residence address  
 490 shall be maintained in the Department's records. Whenever the licensee's address shown either on his

491 license or in the Department's records changes, he shall notify the Department of such change as  
492 required by § 46.2-324.

493 B. The license shall be made of a material and in a form to be determined by the Commissioner.

494 C. Licenses issued to persons less than twenty-one years old shall be immediately and readily  
495 distinguishable from those issued to persons twenty-one years old or older. Distinguishing characteristics  
496 shall include unique design elements of the document and descriptors within the photograph area to  
497 identify persons who are at least fifteen years old but less than twenty-one years old. These descriptors  
498 shall include the month, day, and year when the person will become twenty-one years old.

499 D. The Department shall establish a method by which an applicant for a driver's license or an  
500 identification card may designate his willingness to be an organ donor as provided in Article 2  
501 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1 and shall cooperate with the Virginia Transplant Council  
502 to ensure that such method is designed to encourage organ donation with a minimum of effort on the  
503 part of the donor and the Department.

504 E. If an applicant designates his willingness to be a donor pursuant to subsection D, the Department  
505 may make a notation of this designation on his license or card and shall make a notation of this  
506 designation in his driver record.

507 F. The donor designation authorized in subsection E shall be sufficient legal authority for the  
508 removal, following death, of the subject's organs or tissues without additional authority from the donor,  
509 or his family or estate. *No family member, guardian, agent named pursuant to an advance directive or*  
510 *person responsible for the decedent's estate shall refuse to honor the donor designation or, in any way,*  
511 *seek to avoid honoring the donor designation.*

512 G. The donor designation provided pursuant to subsection D may only be rescinded by appearing in  
513 person at a Department branch office. The Department shall notify the prospective donor of this  
514 requirement at the time he authorizes donor designation.

515 H. With the written consent of his parent or legal guardian, a minor may make a donor designation.

516 I. When requested by the applicant, and upon presentation of a signed statement by a licensed  
517 physician confirming the applicant's condition, the Department shall indicate on the applicant's driver's  
518 license that the applicant is an insulin-dependent diabetic.

519 J. In the absence of gross negligence or willful misconduct, the Department and its employees shall  
520 be immune from any civil or criminal liability in connection with the making of or failure to make a  
521 notation of donor designation on any license or card or in any person's driver record.

522 K. Notwithstanding the foregoing provisions of this section, the Department shall continue to use the  
523 uniform donor document, as formerly set forth in subsection D above, for organ donation designation  
524 until such time as a new method is fully implemented, which shall be no later than July 1, 1994. Any  
525 such uniform donor document, shall, when properly executed, remain valid and shall continue to be  
526 subject to all conditions for execution, delivery, amendment, and revocation as set out in Article 2  
527 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1.

528 L. The Department shall, in coordination with the Virginia Transplant Council, prepare an organ  
529 donor information brochure describing the organ donor program and providing instructions for  
530 completion of the uniform donor document and include a copy of such brochure with every driver's  
531 license renewal notice or application mailed to licensed drivers in Virginia.

532 § 54.1-2984. Suggested form of written advance directives.

533 An advance directive executed pursuant to this article may, but need not, be in the following form,  
534 and may (i) direct a specific procedure or treatment to be provided, such as artificially administered  
535 hydration and nutrition; (ii) direct a specific procedure or treatment to be withheld; or (iii) appoint an  
536 agent to make health care decisions for the declarant as specified in the advance directive if the  
537 declarant is determined to be incapable of making an informed decision, including the decision to make,  
538 after the declarant's death, an anatomical gift of all ~~or any part~~ of the declarant's body *or an organ,*  
539 *tissue or eye donation* pursuant to Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title 32.1 and in  
540 compliance with any directions of the declarant. Should any other specific directions be held to be  
541 invalid, such invalidity shall not affect the advance directive. If the declarant appoints an agent in an  
542 advance directive, that agent shall have the authority to make health care decisions for the declarant as  
543 specified in the advance directive if the declarant is determined to be incapable of making an informed  
544 decision and shall have decision-making priority over any individuals authorized under § 54.1-2986 to  
545 make health care decisions for the declarant. *In no case shall the agent refuse or fail to honor the*  
546 *declarant's wishes in relation to anatomical gifts or organ, tissue or eye donation.*

547 ADVANCE MEDICAL DIRECTIVE

548 I, ....., willfully and voluntarily make known my desire and do hereby declare:

549 If at any time my attending physician should determine that I have a terminal condition where the  
550 application of life-prolonging procedures would serve only to artificially prolong the dying process, I  
551 direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only

552 the administration of medication or the performance of any medical procedure deemed necessary to  
553 provide me with comfort care or to alleviate pain (OPTION: I specifically direct that the following  
554 procedures or treatments be provided to me: ..... )

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

559 OPTION: APPOINTMENT OF AGENT (CROSS THROUGH IF YOU DO NOT WANT TO  
560 APPOINT AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.)

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

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

573 The determination that I am incapable of making an informed decision shall be made by my  
574 attending physician and a second physician or licensed clinical psychologist after a personal examination  
575 of me and shall be certified in writing. Such certification shall be required before treatment is withheld  
576 or withdrawn, and before, or as soon as reasonably practicable after, treatment is provided, and every  
577 180 days thereafter while the treatment continues.

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

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

588 The powers of my agent shall include the following:

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

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

599 C. To employ and discharge my health care providers;

600 D. To authorize my admission to or discharge (including transfer to another facility) from any  
601 hospital, hospice, nursing home, adult home or other medical care facility for services other than those  
602 for treatment of mental illness requiring admission procedures provided in Article 1 (§ 37.1-63 et seq.)  
603 of Chapter 2 of Title 37.1; and

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

606 Further, my agent shall not be liable for the costs of treatment pursuant to his authorization, based  
607 solely on that authorization.

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

612 Upon my death, I direct that an anatomical gift of all ~~or any part~~ of my body *or certain organ,*  
613 *tissue or eye donations* may be made pursuant to Article 2 (§ 32.1-289 et seq.) of Chapter 8 of Title

614 32.1 and in accordance with my directions, if any. I hereby appoint ..... as my agent, of .... (address and  
615 telephone number), to make any such anatomical gift *or organ, tissue or eye donation* following my  
616 death. I further direct that: ... (declarant's directions concerning anatomical gift *or organ, tissue or eye*  
617 *donation*).

618 This advance directive shall not terminate in the event of my disability.

619 By signing below, I indicate that I am emotionally and mentally competent to make this advance  
620 directive and that I understand the purpose and effect of this document.

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

623 The declarant signed the foregoing advance directive in my presence. I am not the spouse or a blood  
624 relative of the declarant.

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

626 § 54.1-2986. Procedure in absence of an advance directive; procedure for advance directive without  
627 agent; no presumption; persons who may authorize treatment for patients incapable of informed  
628 decisions; applicability restricted to nonprotesting patients.

629 A. Whenever (i) the attending physician of an adult patient has determined after personal  
630 examination that such patient, because of mental illness, mental retardation, or any other mental  
631 disorder, or a physical disorder which precludes communication or impairs judgment, is incapable of  
632 making an informed decision about providing, withholding or withdrawing a specific medical treatment  
633 or course of treatment and such adult patient has not made an advance directive in accordance with this  
634 article or (ii) the attending physician of an adult patient has determined after personal examination that  
635 such patient, because of mental illness, mental retardation, or any other mental disorder, or a physical  
636 disorder which precludes communication or impairs judgment, is incapable of making an informed  
637 decision about providing, withholding or withdrawing a specific medical treatment or course of treatment  
638 and the adult patient has made an advance directive in accordance with this article which does not  
639 indicate his wishes with respect to the specific course of treatment at issue and does not appoint an  
640 agent to make health care decisions upon his becoming incapable of making an informed decision, the  
641 attending physician may, upon compliance with the provisions of this section, provide to, withhold or  
642 withdraw from such patient medical or surgical care or treatment, including, but not limited to,  
643 life-prolonging procedures, upon the authorization of any of the following persons, in the specified order  
644 of priority, if the physician is not aware of any available, willing and competent person in a higher  
645 class:

- 646 1. A guardian or committee for the patient. This subdivision shall not be construed to require such  
647 appointment in order that a treatment decision can be made under this section; or
- 648 2. The patient's spouse except where a divorce action has been filed and the divorce is not final; or
- 649 3. An adult child of the patient; or
- 650 4. A parent of the patient; or
- 651 5. An adult brother or sister of the patient; or
- 652 6. Any other relative of the patient in the descending order of blood relationship.

653 If two or more of the persons listed in the same class in subdivisions A 3 through A 6 with equal  
654 decision-making priority inform the attending physician that they disagree as to a particular treatment  
655 decision, the attending physician may rely on the authorization of a majority of the reasonably available  
656 members of that class.

657 Any person authorized to consent to the providing, withholding or withdrawing of treatment pursuant  
658 to this article shall (i) prior to giving consent, make a good faith effort to ascertain the risks and  
659 benefits of and alternatives to the treatment and the religious beliefs and basic values of the patient  
660 receiving treatment, and to inform the patient, to the extent possible, of the proposed treatment and the  
661 fact that someone else is authorized to make a decision regarding that treatment and (ii) base his  
662 decision on the patient's religious beliefs and basic values and any preferences previously expressed by  
663 the patient regarding such treatment to the extent they are known, and if unknown or unclear, on the  
664 patient's best interests. *Regardless of the absence of an advance directive, if the patient has expressed*  
665 *his intent to be an organ donor in any written document, no person noted in this section shall revoke,*  
666 *or in any way hinder, such organ donation.*

667 B. The absence of an advance directive by an adult patient shall not give rise to any presumption as  
668 to his intent to consent to or refuse life-prolonging procedures.

669 C. The provisions of this article shall not apply to authorization of nontherapeutic sterilization,  
670 abortion, psychosurgery, or admission to a mental retardation facility or psychiatric hospital, as defined  
671 in § 37.1-1; however, the provisions of this article, if otherwise applicable, may be employed to  
672 authorize a specific treatment or course of treatment for a person who has been lawfully admitted to a  
673 mental retardation facility or psychiatric hospital.

674 Further, the provisions of this article shall not authorize providing, continuing, withholding or

675 withdrawing of treatment if the provider of the treatment knows that such an action is protested by the  
676 patient. No person shall authorize treatment, or a course of treatment, pursuant to this article, that such  
677 person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic  
678 values of the patient unable to make a decision, whether expressed orally or in writing.

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

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