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HOUSE BILL NO. 1004

Offered January 9, 2008

Prefiled January 8, 2008

A *BILL to amend and reenact §§ 54.1-2983 and 54.1-2984 of the Code of Virginia, relating to advance mental health directives.*

Patrons—Bell, Albo, Athey, Carrico, Cole, Cosgrove, Gilbert, Lingamfelter, Massie, Merricks, Scott, E.T. and Sherwood

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2983 and 54.1-2984 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2983. Procedure for making advance directive; notice to physician.

Any competent adult may, at any time, make a written advance directive (i) authorizing the providing, withholding or withdrawal of life-prolonging procedures in the event such person should have a terminal condition; ~~A written advance directive may also appoint;~~ (ii) *setting forth procedures or instructions with regard to mental health treatment, including consent to or refusal of mental health treatment;* and (iii) *appointing an agent to make health care decisions, including mental health care decisions,* for the declarant under the circumstances stated in the advance directive if the declarant should be determined to be incapable of making an informed decision. A written advance directive shall be signed by the declarant in the presence of two subscribing witnesses. *Under no circumstances shall a mental health advance directive override or supersede any judge or special justice finding or ruling made pursuant to § 37.2-817.*

Further, any competent adult who has been diagnosed by his attending physician as being in a terminal condition may make an oral advance directive to authorize the providing, withholding or withdrawing of life-prolonging procedures or to appoint an agent to make health care decisions for the declarant under the circumstances stated in the advance directive if the declarant should be determined to be incapable of making an informed decision. An oral advance directive shall be made in the presence of the attending physician and two witnesses.

It shall be the responsibility of the declarant to provide for notification to his attending physician that an advance directive has been made. In the event the declarant is comatose, incapacitated or otherwise mentally or physically incapable of communication, any other person may notify the physician of the existence of an advance directive. An attending physician who is so notified shall promptly make the advance directive or a copy of the advance directive, if written, or the fact of the advance directive, if oral, a part of the declarant's medical records.

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

An advance directive executed pursuant to this article may, but need not, be in the following form, and may (i) direct a specific *medical* procedure or treatment to be provided, such as artificially administered hydration and nutrition; (ii) direct a specific *medical* procedure or treatment to be withheld; ~~or~~ (iii) *set forth preferences or instructions with regard to mental health treatment;* or (iv) appoint an agent to make health care decisions, *including mental health care decisions,* for the declarant as specified in the advance directive if the declarant is determined to be incapable of making an informed decision; ~~including the decision to.~~ *An agent appointed pursuant to this article may make, after the declarant's death, an anatomical gift of all of the declarant's body or an organ, tissue or eye donation pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1 and in compliance with any directions of the declarant. Should any other specific directions be held to be invalid, such invalidity shall not affect the advance directive. If the declarant appoints an agent in an advance directive, that agent shall have the authority to make health care decisions, including mental health care decisions,* for the declarant as specified in the advance directive if the declarant is determined to be incapable of making an informed decision and shall have decision-making priority over any individuals authorized under § 54.1-2986 to make health care decisions, *including mental health care decisions,* for the declarant. In no case shall the agent refuse or fail to honor the declarant's wishes in relation to anatomical gifts or organ, tissue or eye donation.

ADVANCE MEDICAL DIRECTIVE

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

If at any time my attending physician should determine that I have a terminal condition where the application of life-prolonging procedures would serve only

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58 to artificially prolong the dying process, I direct that such procedures be
59 withheld or withdrawn, and that I be permitted to die naturally with only the
60 administration of medication or the performance of any medical procedure
61 deemed necessary to provide me with comfort care or to alleviate pain (OPTION:
62 I specifically direct that the following procedures or treatments be provided
63 to me:)

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

68 *OPTION: ADVANCED DIRECTIVE FOR MENTAL HEALTH CARE (CROSS THROUGH IF YOU*
69 *DO NOT WISH TO MAKE AN ADVANCED DIRECTIVE FOR MENTAL HEALTH CARE; CROSS*
70 *THROUGH ANY LANGUAGE YOU DO NOT WISH TO INCLUDE IN YOUR ADVANCE DIRECTIVE;*
71 *ADD ANY LANGUAGE YOU WISH TO INCLUDE)*

72
73 *If at any time my attending physician and a second physician or licensed*
74 *clinical psychologist should determine after personal examination that I am*
75 *incapable of making an informed decision,*

76
77 *I consent to the following medical treatments:*

78
79 *I do not consent to and specifically refuse the following medical*
80 *treatments:*

81
82 *I specifically direct that the following procedures or treatments be*
83 *provided to me:*

84
85 *Additional information about my mental health care treatment needs:*

86
87 *OPTION: APPOINTMENT OF AGENT (CROSS THROUGH IF YOU DO NOT WANT TO*
88 *APPOINT AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.)*

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

94 I hereby grant to my agent, named above, full power and authority to make health care decisions,
95 *including mental health care decisions*, on my behalf as described below whenever I have been
96 determined to be incapable of making an informed decision about providing, withholding or withdrawing
97 medical *or mental health* treatment. The phrase "incapable of making an informed decision" means
98 unable to understand the nature, extent and probable consequences of a proposed medical *or mental*
99 *health care* decision or unable to make a rational evaluation of the risks and benefits of a proposed
100 medical *or mental health care* decision as compared with the risks and benefits of alternatives to that
101 decision, or unable to communicate such understanding in any way. My agent's authority hereunder is
102 effective as long as I am incapable of making an informed decision.

103 The determination that I am incapable of making an informed decision shall be made by my
104 attending physician and a second physician or licensed clinical psychologist after a personal examination
105 of me and shall be certified in writing. Such certification shall be required before treatment is withheld
106 or withdrawn, and before, or as soon as reasonably practicable after, treatment is provided, and every
107 180 days thereafter while the treatment continues.

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

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

The powers of my agent shall include the following:

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

B. To consent to or refuse or withdraw consent to any type of mental health care, treatment, or diagnostic procedure, including any medication, electroconvulsive treatment, or physical restraint or seclusion;

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

CD. To employ and discharge my health care and mental health care providers;

DE. To authorize my admission to or discharge (including transfer to another facility) from any hospital, hospice, nursing home, adult home or other medical care facility, including mental health care facility for services other than those for treatment of mental illness requiring admission procedures provided in Article 4 (§ 37.2-800 et seq.) of Chapter 8 of Title 37.2; and

EF. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical and mental health care providers.

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

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

Upon my death, I direct that an anatomical gift of all of my body or certain organ, tissue or eye donations may be made pursuant to Article 2 (§ 32.1-289.2 et seq.) of Chapter 8 of Title 32.1 and in accordance with my directions, if any. I hereby appoint as my agent, of (address and telephone number), to make any such anatomical gift or organ, tissue or eye donation following my death. I further direct that: (declarant's directions concerning anatomical gift or organ, tissue or eye donation).

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

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

(Date) (Signature of Declarant)

The declarant signed the foregoing advance directive in my presence.

(Witness) _____

(Witness) _____

G. Under no circumstances shall a mental health advance directive created pursuant to this article override or supersede any judge or special justice finding or ruling made pursuant to § 37.2-817.