

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Human Services to which was referred House Bill No.
3 469 entitled “An act relating to allowing remote witnesses and explainers for a
4 Ulysses clause in an advance directive” respectfully reports that it has
5 considered the same and recommends that the bill be amended by striking out
6 all after the enacting clause and inserting in lieu thereof the following:

7 Sec. 1. 18 V.S.A. § 9701 is amended to read:

8 § 9701. DEFINITIONS

9 As used in this chapter:

10 * * *

11 **(35) “Digital signature” means an electronic identifier that is**
12 **intended by the individual using it to have the same force and effect as a**
13 **manual signature and that meets all of the following requirements:**

14 **(A) uses an algorithm approved by either the National Institute**
15 **of Standards and Technology or by the Department of Health;**

16 **(B) is unique to the individual using it;**

17 **(C) is capable of verification;**

18 **(D) is under the sole control of the individual using it;**

19 **(E) is linked to data in a manner that invalidates the digital**
20 **signature if the data is changed;**

1 **(F) persists with the document and not by association in separate**
2 **files; and**

3 **(G) is bound to a digital certificate.**

4 (36) “Remote witness” means a witness who is not physically present
5 when a principal signs an advance directive.

6 Sec. 2. 18 V.S.A. § 9703 is amended

7 § 9703. FORM AND EXECUTION

8 (a) An adult with capacity may execute an advance directive at any time.

9 (b)(1) The advance directive shall be dated, executed by the principal or by
10 another individual in the principal’s presence at the principal’s express
11 direction if the principal is physically unable to do so, and signed ~~in the~~
12 ~~presence of~~ by two or more witnesses at least 18 years of age, who shall sign
13 and affirm that the principal appeared to understand the nature of the document
14 and to be free from duress or undue influence at the time the advance directive
15 was signed.

16 (2) On and after April 1, 2024, the principal shall have either signed in
17 the physical presence of each witness or the following conditions shall have
18 been met with respect to each remote witness:

19 (A) the principal and the remote witness were known to each other;

20 (B) based on video or telephonic communication between the

21 principal and the remote witness, the remote witness attested that the principal

1 seemed to understand the nature of the document and to be free from duress or
2 undue influence at the time the advance directive was signed; and

3 (C) the principal included on the advance directive the name and
4 contact information for the remote witness and the nature of the principal’s
5 relationship to the remote witness.

6 (3) A health care provider may serve as a witness to the principal’s
7 execution of the advance directive under this subsection.

8 (4) If the principal is being admitted to or is a resident of a nursing home
9 or residential care facility or is being admitted to or is a patient in a hospital at
10 the time of execution, the individual who explained the nature and effect of the
11 advance directive to the principal pursuant to subsection (d) or (e) of this
12 section may also serve as one of the witnesses to the principal’s execution of
13 the advance directive under this subsection.

14 (c) Neither the agent appointed by the principal nor the principal’s spouse,
15 parent, adult sibling, adult child, or adult grandchild may witness the advance
16 directive.

17 (d)(1) An advance directive shall not be effective if, at the time of
18 execution, the principal is being admitted to or is a resident of a nursing home
19 as defined in 33 V.S.A. § 7102 or a residential care facility, unless one of the
20 following individuals explains the nature and effect of an advance directive to

1 the principal and signs a statement affirming that ~~he or she~~ the individual has
2 provided the explanation:

3 (A) an ombudsman;

4 (B) a recognized member of the clergy;

5 (C) an attorney licensed to practice in this State;

6 (D) a Probate Division of the Superior Court designee;

7 (E) an individual designated by a hospital pursuant to subsection
8 9709(d) of this title;

9 (F) a mental health patient representative;

10 (G) an individual who is volunteering at the nursing home or
11 residential care facility without compensation and has received appropriate
12 training regarding the explanation of advance directives; or

13 (H) a clinician, ~~as long as~~ provided the clinician is not employed by
14 the nursing home or residential care facility at the time of the explanation.

15 (2) It is the intent of this subsection to ensure that residents of nursing
16 homes and residential care facilities are willingly and voluntarily executing
17 advance directives.

18 (3) The individual who explains the nature and effect of an advance
19 directive to the principal under this subsection may be physically present in the
20 same location as the principal at the time of the explanation or may deliver the
21 explanation to the principal by video or telephone.

1 (e)(1) An advance directive shall not be effective if, at the time of
2 execution, the principal is being admitted to or is a patient in a hospital, unless
3 one of the following individuals ~~has explained~~ explains the nature and effect of
4 an advance directive to the principal and signs a statement affirming that ~~he or~~
5 ~~she~~ the individual has provided the explanation:

6 ~~(1)(A)~~ (A) an ombudsman;

7 ~~(2)(B)~~ (B) a recognized member of the clergy;

8 ~~(3)(C)~~ (C) an attorney licensed to practice in this State;

9 ~~(4)(D)~~ (D) a Probate Division of the Superior Court designee;

10 ~~(5)(E)~~ (E) an individual designated by the hospital pursuant to subsection
11 9709(d) of this title; or

12 ~~(6)(F)~~ (F) a mental health patient representative.

13 (2) The individual who explains the nature and effect of an advance
14 directive to the principal under this subsection may be physically present in the
15 same location as the principal at the time of the explanation or may deliver the
16 explanation to the principal by video or telephone.

17 (f) A durable power of attorney for health care, terminal care document, or
18 advance directive executed prior to the enactment of this chapter shall be a
19 valid advance directive if the document complies with the statutory
20 requirements in effect at the time the document was executed or with the
21 provisions of this chapter.

1 (g) A principal, a witness, or an individual who explains an advance
2 directive under subsection (d) or (e) of this section may sign the advance
3 directive or the explanation affirmation statement using ~~an electronic signature,~~
4 ~~provided that the electronic signature complies with the Uniform Electronic~~
5 ~~Transaction Act, 9 V.S.A. chapter 20~~ **a digital signature, provided that, for a**
6 **remote witness, the conditions set forth in subdivision (b)(2) of this section**
7 **are met.**

8 Sec. 3. 18 V.S.A. § 9707(h) is amended to read:

9 (h)(1) An advance directive executed in accordance with section 9703 of
10 this title may contain a provision permitting the agent, in the event that the
11 principal lacks capacity, to authorize or withhold health care over the
12 principal's objection. In order to be valid, the provision shall comply with the
13 following requirements:

14 (A) An agent shall be named in the provision.

15 (B) The agent shall accept in writing the responsibility of authorizing
16 or withholding health care over the principal's objection in the event the
17 principal lacks capacity.

18 (C) A clinician for the principal shall sign the provision and affirm
19 that the principal appeared to understand the benefits, risks, and alternatives to
20 the health care being authorized or rejected by the principal in the provision.

21 **The first time a principal executes a provision under this subsection (h),**

1 **the principal's clinician shall evaluate the principal's understanding of the**
2 **care being authorized or rejected in the provision based on the clinician's**
3 **in-person observation of the principal. If the principal later amends the**
4 **provision by executing a new advance directive pursuant to section 9703**
5 **of this title and the new advance directive includes a provision permitting**
6 **the agent to authorize or withhold health care over the principal's**
7 **objection pursuant to this subsection (h), the clinician's evaluation of the**
8 **principal's understanding may be based on either an in-person**
9 **observation or a live, interactive, audio-video observation of the principal.**

10 (D)(i) An ombudsman, a mental health patient representative,
11 attorney licensed to practice law in this State, or the Probate Division of the
12 Superior Court designee shall sign a statement affirming that ~~he or she~~ the
13 individual has explained the nature and effect of the provision to the principal,
14 and that the principal appeared to understand the explanation and be free from
15 duress or undue influence. **The first time a principal executes a provision**
16 **under this subsection (h), the individual may providing the explanation**
17 **shall** be physically present in the same location as the principal at the time of
18 the explanation ~~or may deliver the explanation to the principal by video or~~
19 ~~telephone.~~ **If the principal later amends the provision by executing a new**
20 **advance directive pursuant to section 9703 of this title and the new**
21 **advance directive includes a provision permitting the agent to authorize or**

1 **withhold health care over the principal’s objection pursuant to this**
2 **subsection (h), the individual providing the explanation may be physically**
3 **present in the same location as the principal at the time of the explanation**
4 **or may deliver the explanation to the principal over a live, interactive,**
5 **audio-video connection.**

6 (ii) If the principal is a patient in a hospital when the provision is
7 executed, the ombudsman, mental health patient representative, attorney, or
8 Probate Division of the Superior Court designee shall be independent of the
9 hospital and not an interested individual.

10 (E) The provision shall specify the treatments to which it applies, and
11 shall include an explicit statement that the principal desires or does not desire
12 the proposed treatments even over the principal’s objection at the time
13 treatment is being offered or withheld. The provision may include a statement
14 expressly granting to the health care agent the authority to consent to the
15 principal’s voluntary hospitalization.

16 (F) The provision shall include an acknowledgment that the principal
17 is knowingly and voluntarily waiving the right to refuse or receive treatment at
18 a time of incapacity, and that the principal understands that a clinician will
19 determine capacity.

20 (G) The principal, the agent, the clinician, and the individual who
21 explained the provision under subdivision (D) of this subdivision (h)(1), or any

1 one or more of them, may sign the provision, acceptance, or explanation
2 affirmation statement, as applicable, using an electronic signature, provided
3 that the electronic signature complies with the Uniform Electronic Transaction
4 Act, 9 V.S.A. chapter 20.

5 (2) A provision executed in compliance with subdivision (1) of this
6 subsection shall be effective when the principal’s clinician and a second
7 clinician have determined pursuant to subdivision 9706(a)(1) of this title that
8 the principal lacks capacity.

9 (3) If an advance directive contains a provision executed in compliance
10 with this section:

11 (A) The agent may, in the event the principal lacks capacity, make
12 health care decisions over the principal’s objection, provided that the decisions
13 are made in compliance with subsection 9711(d) of this title.

14 (B) A clinician shall follow instructions of the agent authorizing or
15 withholding health care over the principal’s objection.

16 Sec. 4. 18 V.S.A. § 9721 is amended to read:

17 § 9721. REMOTE WITNESSES AND EXPLAINERS **FOR A LIMITED**
18 **TIME THROUGH MARCH 31, 2024**

19 (a) ~~As used in this section, “remote witness” means a witness who is not~~
20 ~~physically present when a principal signs an advance directive. [Repealed.]~~

1 (b)(1) Notwithstanding any provision of subsection 9703(b) of this title to
2 the contrary, an advance directive executed by a principal between February
3 15, 2020 and June 15, 2020 shall be deemed to be valid even if the principal
4 signed the advance directive outside the physical presence of one or both of the
5 required witnesses, provided all of the following conditions were met with
6 respect to each remote witness:

7 (A) the principal and the remote witness were known to each other;

8 (B) the remote witness was informed about the role of a witness to
9 the execution of an advance directive; and

10 (C) the principal included on the advance directive the name and
11 contact information for the witness.

12 (2) An advance directive executed as set forth in subdivision (1) of this
13 subsection shall be valid until June 30, 2021 unless amended, revoked, or
14 suspended by the principal in accordance with this chapter prior to that date.

15 (c)(1) Notwithstanding any provision of subsection 9703(b) of this title to
16 the contrary, an advance directive executed by a principal between June 15,
17 2020 and March 31, 2024 shall be deemed to be valid even if the principal
18 signed the advance directive outside the physical presence of one or both of the
19 required witnesses, provided all of the following conditions are met with
20 respect to each remote witness:

21 (A) the principal and the remote witness were known to each other;

1 (B) based on video or telephonic communication between the
2 principal and the remote witness, the remote witness attested that the principal
3 seemed to understand the nature of the document and to be free from duress or
4 undue influence at the time the advance directive was signed; and

5 (C) the principal included on the advance directive the name and
6 contact information for the remote witness and the nature of the principal's
7 relationship to the remote witness.

8 (2) An advance directive executed as set forth in subdivision (1) of this
9 subsection shall remain valid unless amended, revoked, or suspended by the
10 principal in accordance with this chapter.

11 (d)(1) Notwithstanding any provision of subsection 9703(d) or (e) of this
12 title to the contrary, an advance directive executed by a principal between
13 February 15, 2020 and March 31, 2024 while the principal was being admitted
14 to or was a resident of a nursing home or residential care facility or was being
15 admitted to or was a patient in a hospital shall be deemed to be valid even if
16 the individual who explained the nature and effect of the advance directive to
17 the principal in accordance with subsection 9703(d) or (e) of this title, as
18 applicable, was not physically present in the same location as the principal at
19 the time of the explanation, provided the individual delivering the explanation
20 was communicating with the principal by video or telephone.

1 (2) An advance directive executed in accordance with this subsection
2 shall remain valid as set forth in subsection (b) or (c) of this section, as
3 applicable.

4 (e) On and after April 1, 2024, advance directives shall only be executed in
5 accordance with section 9703 of this chapter.

6 Sec. 5. EFFECTIVE DATE

7 This act shall take effect on April 1, 2024.

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17 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE