H.435

Introduced by Committee on Human Services

Date:

Subject: Health; palliative care; hospice care; pain management

Statement of purpose: This bill proposes to promote informed patient choice and increase access to and improve the quality of palliative care services in Vermont.

An act relating to palliative care

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Purpose and Definition * * *

Sec. 1. LEGISLATIVE PURPOSE

It is the purpose of this act to improve the quality of palliative care and pain management available to all Vermonters, to ensure that Vermonters are aware of their rights and of the care options available to them, and to expand access to palliative care services for children and adults in this state.

Sec. 2. 18 V.S.A. § 2 is amended to read:

§ 2. DEFINITIONS

The following words and phrases, as used in this title, will have the following meanings unless the context otherwise requires:

* * *

(6) "Palliative care" means interdisciplinary care given to improve the quality of life of patients and their families facing the problems associated with a serious medical condition. Palliative care through the continuum of illness involves addressing physical, cognitive, emotional, psychological, and spiritual needs and facilitating patient autonomy, access to information, and choice.

~~(6)~~(7) "Permit" means any permit or license issued pursuant to this title.

~~(7)~~(8) "Person" means any individual, company, corporation, association, partnership, the United States government or any department or agency thereof, and the state of Vermont or any department, agency, subdivision, or municipality thereof.

~~(8)~~(9) "Public health hazard" means the potential harm to the public health by virtue of any condition or any biological, chemical, or physical agent. In determining whether a health hazard is public or private, the commissioner shall consider at least the following factors:

(A) the number of persons at risk;

(B) the characteristics of the person or persons at risk;

(C) the characteristics of the condition or agent which is the source of potential harm;

(D) the availability of private remedies;

(E) the geographical area and characteristics thereof where the condition or agent which is the source of the potential harm or the receptors exist;

(F) department policy as established by rule or agency procedure.

~~(9)~~(10) "Public health risk" means the probability of experiencing a public health hazard.

~~(10)~~(11) "Selectmen," in the context of this title, includes trustees of an incorporated village, or a city council when appropriate.

~~(11)~~(12) "Significant public health risk" means a public health risk of such magnitude that the commissioner or a local health officer has reason to believe that it must be mitigated. The magnitude of the risk is a factor of the characteristics of the public health hazard and the degree and the circumstances of exposure to such public health hazard.

* * * Patients' Bills of Rights and Right to Information * * *

Sec. 3. 18 V.S.A. chapter 42A is added to read:

CHAPTER 42A. PATIENTS' BILL OF RIGHTS FOR PALLIATIVE CARE AND PAIN MANAGEMENT

§ 1871. PATIENTS' BILL OF RIGHTS FOR PALLIATIVE CARE AND PAIN MANAGEMENT

(a) A patient has the right to be informed of all evidence-based options for care and treatment, including palliative care, in order to make a fully informed patient choice.

(b) A patient with a terminal illness has the right to be informed by a clinician of all available options related to terminal care; to be able to request any, all, or none of these options; and to expect and receive supportive care for the specific option or options available.

(c) A patient suffering from pain has the right to request or reject the use of any or all treatments in order to relieve his or her pain.

(d) A patient suffering from a chronic condition has the right to competent and compassionate medical assistance in managing his or her physical and emotional symptoms.

(e) A pediatric patient suffering from a serious or life-limiting illness or condition has the right to receive palliative care while seeking and undergoing potentially curative treatment.

Sec. 4. 12 V.S.A. § 1909 is amended to read:

§ 1909. LIMITATION OF MEDICAL MALPRACTICE ACTION BASED ON LACK OF INFORMED CONSENT

* * *

(d) A patient shall be entitled to a reasonable answer to any specific question about foreseeable risks and benefits, and a medical practitioner shall

not withhold any requested information ~~except to the extent that a reasonable medical practitioner would withhold the information because the manner and extent of such disclosure could reasonably be expected to adversely and substantially affect the patient's condition, in which case the medical practitioner shall provide the information to a member of the immediate family, if reasonably available, notwithstanding the provisions of 12 V.S.A. § 1612(a)~~.

Sec. 5. 18 V.S.A. § 1852 is amended to read:

§ 1852. PATIENTS' BILL OF RIGHTS; ADOPTION

(a) The general assembly hereby adopts the "Bill of Rights for Hospital Patients" as follows:

* * *

(3) The patient has the right to obtain, from the physician coordinating his or her care, complete and current information concerning diagnosis, treatment, and any known prognosis in terms the patient can reasonably be expected to understand. If the patient consents or if the patient is incompetent or unable to understand, immediate family members, a reciprocal beneficiary or a guardian may also obtain this information. ~~When it is not medically advisable to give such information to the patient, the information shall be made available to immediate family members, a reciprocal beneficiary or a guardian.~~

The patient has the right to know by name the attending physician primarily responsible for coordinating his or her care.

* * *

* * * Medicaid Waiver for Pediatric Palliative Care * * *

Sec. 6. REQUEST FOR WAIVER

No later than October 1, 2009, the secretary of human services shall apply to the federal Centers for Medicare and Medicaid Services for a Medicaid waiver to allow Vermont to provide its Medicaid-eligible children who have serious medical conditions with concurrent palliative care and curative care services.

* * * Inclusion of Palliative Care in the Blueprint for Health * * *

Sec. 7. 18 V.S.A. § 701 is amended to read:

§ 701. DEFINITIONS

For the purposes of this chapter:

(1) "Blueprint for Health" means the state's plan for chronic care infrastructure, prevention of chronic conditions, and chronic care management program, and includes an integrated approach to patient self-management, community development, health care system and professional practice change, and information technology initiatives.

(2) "Chronic care" means health services provided by a health care professional for an established clinical condition that is expected to last a year

or more and that requires ongoing clinical management attempting to restore the individual to highest function, minimize the negative effects of the condition, ~~and~~ prevent complications related to chronic conditions, engage in advanced care planning, and promote appropriate access to palliative care. Examples of chronic conditions include diabetes, hypertension, cardiovascular disease, cancer, asthma, pulmonary disease, substance abuse, mental illness, spinal cord injury, ~~and~~ hyperlipidemia, and chronic pain.

(3) "Chronic care information system" means the electronic database developed under the Blueprint for Health that shall include information on all cases of a particular disease or health condition in a defined population of individuals.

(4) "Chronic care management" means a system of coordinated health care interventions and communications for individuals with chronic conditions, including significant patient self-care efforts, systemic supports for the physician and patient relationship, and a plan of care emphasizing prevention of complications utilizing evidence-based practice guidelines, patient empowerment strategies, and evaluation of clinical, humanistic, and economic outcomes on an ongoing basis with the goal of improving overall health.

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* * * Adding Treatment of Pain to Scope of Practice Statutes * * *

Sec. 8. 26 V.S.A. § 521 is amended to read:

§ 521. DEFINITIONS

As used in this chapter:

* * *

(3) "The practice of chiropractic" means the diagnosis of human ailments and diseases related to subluxations, joint dysfunctions, neuromuscular and skeletal disorders for the purpose of their detection, correction or referral in order to restore and maintain health, without providing drugs or performing surgery; the use of physical and clinical examinations, conventional radiologic procedures and interpretation, as well as the use of diagnostic imaging read and interpreted by a person so licensed and clinical laboratory procedures to determine the propriety of a regimen of chiropractic care; adjunctive therapies approved by the board, by rule, to be used in conjunction with chiropractic treatment; and treatment <u>of pain</u> by adjustment or manipulation of the spine or other joints and connected neuromusculoskeletal tissues and bodily articulations.

* * *

Sec. 9. 26 V.S.A. § 1311 is amended to read:

§ 1311. DEFINITIONS

For the purposes of this chapter:

(1) A person who advertises or holds himself or herself out to the public as a physician or surgeon, or who assumes the title or uses the words or letters "Dr.," "Doctor," "Professor," "M.D.," or "M.B.," in connection with his or her name, or any other title implying or designating that he or she is a practitioner of medicine or surgery in any of its branches, or shall advertise or hold himself or herself out to the public as one skilled in the art of curing or alleviating disease, pain, bodily injuries, or physical or nervous ailments, or shall prescribe, direct, recommend, or advise, give or sell for the use of any person, any drug, medicine or other agency or application for the treatment, cure, or relief of any bodily injury, pain, infirmity, or disease, or who follows the occupation of treating diseases by any system or method, shall be deemed a physician, or practitioner of medicine or surgery.

* * *

Sec. 10. 26 V.S.A. § 1572 is amended to read:

§ 1572. DEFINITIONS

As used in this chapter:

(1) "Board" means the Vermont state board of nursing.

(2) "Registered nursing" means the practice of nursing which includes ~~but is not limited to~~:

(A) Assessing the health status of individuals and groups.

(B) Establishing a nursing diagnosis.

(C) Establishing goals to meet identified health care needs.

(D) Planning a strategy of medical or health care.

(E) Prescribing nursing interventions to implement the strategy of care.

(F) Implementing the strategy of care.

(G) Delegating nursing interventions that may be performed by others and that do not conflict with this subchapter.

(H) Maintaining safe and effective nursing care rendered directly or indirectly.

(I) Evaluating responses to interventions.

(J) Teaching the theory and practice of nursing.

(K) Managing and supervising the practice of nursing.

(L) Collaborating with other health professionals in the management of health care.

(M) Addressing patient pain.

(N) Performance of such additional acts requiring education and training and which are recognized jointly by the medical and nursing professions as proper to be performed by registered nurses.

Sec. 11. 26 V.S.A. § 4121 is amended to read:

§ 4121. DEFINITIONS

As used in this chapter:

* * *

(8) "Naturopathic medicine" or "the practice of naturopathic medicine" means a system of health care that utilizes education, natural medicines, and natural therapies to support and stimulate a patient's intrinsic self-healing processes and to prevent, diagnose, and treat human health conditions ~~and~~, injuries, and pain. In connection with such system of health care, an individual licensed under this chapter may:

(A) Administer or provide for preventative and therapeutic purposes nonprescription medicines, topical medicines, botanical medicines, homeopathic medicines, counseling, hypnotherapy, nutritional and dietary therapy, naturopathic physical medicine, naturopathic childbirth, therapeutic devices, barrier devices for contraception, and prescription medicines authorized by this chapter or by the formulary established under subsection 4125(c) of this title.

(B) Use diagnostic procedures commonly used by physicians in general practice, including physical and orificial examinations, electrocardiograms, diagnostic imaging techniques, phlebotomy, clinical laboratory tests and examinations, and physiological function tests.

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* * * Adding a Definition of COLST to the Advance Directive Statutes * * *

Sec. 12. 18 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

As used in this chapter:

* * *

(6) "Clinician orders for life sustaining treatment" or "COLST" means a clinician's order or orders for treatment such as intubation, mechanical ventilation, transfer to hospital, antibiotics, artificially administered nutrition, or another medical intervention. A COLST order is designed for use in outpatient settings and health care facilities and may include a DNR order that meets the requirements of section 9708 of this title.

~~(6)~~(7) "Commissioner" means the commissioner of the department of health.

~~(7)~~(8) "Do-not-resuscitate order" or "DNR order" means a written order of the principal's clinician directing health care providers not to attempt resuscitation.

~~(8)~~(9) "DNR identification" means a document, bracelet, other jewelry, wallet card, or other means of identifying the principal as an individual who has a DNR order.

~~(9)~~(10) "Emergency medical personnel" shall have the same meaning as provided in section 2651 of Title 24.

~~(10)~~(11) "Guardian" means a person appointed by the probate court who has the authority to make medical decisions pursuant to subdivision 3069(b)(5) of Title 14.

~~(11)~~(12) "Health care" means any treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition, including services provided pursuant to a clinician's order, and services to assist in activities of daily living provided by a health care provider or in a health care facility or residential care facility.

~~(12)~~(13) "Health care decision" means consent, refusal to consent, or withdrawal of consent to any health care.

~~(13)~~(14) "Health care facility" shall have the same meaning as provided in subdivision 9432(7) of this title.

~~(14)~~(15) "Health care provider" shall have the same meaning as provided in subdivision 9432(8) of this title and shall include emergency medical personnel.

~~(15)~~(16) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, codified at 42 U.S.C. § 1320d and 45 C.F.R. §§ 160–164.

~~(16)~~(17) "Informed consent" means the consent given voluntarily by an individual with capacity after being fully informed of the nature, benefits, risks, and consequences of the proposed health care, alternative health care, and no health care.

~~(17)~~(18) "Interested individual" means:

(A) the principal's spouse, adult child, parent, adult sibling, adult grandchild, reciprocal beneficiary, or clergy person; or

(B) any adult who has exhibited special care and concern for the principal and who is personally familiar with the principal's values.

~~(18)~~(19) "Life sustaining treatment" means any medical intervention, including nutrition and hydration administered by medical means and antibiotics, which is intended to extend life and without which the principal is likely to die.

~~(19)~~(20) "Nutrition and hydration administered by medical means" means the provision of food and water by means other than the natural ingestion of food or fluids by eating or drinking. Natural ingestion includes spoon feeding or similar means of assistance.

~~(20)~~(21) "Ombudsman" means an individual appointed as a long-term care ombudsman under the program contracted through the department of aging and independent living pursuant to the Older Americans Act of 1965, as amended.

~~(21)~~(22) "Patient's clinician" means the clinician who currently has responsibility for providing health care to the patient.

~~(22)~~(23) "Principal" means an adult who has executed an advance directive.

~~(23)~~(24) "Principal's clinician" means a clinician who currently has responsibility for providing health care to the principal.

~~(24)~~(25) "Probate court designee" means a responsible, knowledgeable individual independent of a health care facility designated by the probate court in the district where the principal resides or the county where the facility is located.

~~(25)~~(26) "Procurement organization" shall have the same meaning as in subdivision 5238(10) of this title.

~~(26)~~(27) "Reasonably available" means able to be contacted with a level of diligence appropriate to the seriousness and urgency of a principal's health care needs, and willing and able to act in a timely manner considering the urgency of the principal's health care needs.

~~(27)~~(28) "Registry" means a secure, web-based database created by the commissioner to which individuals may submit an advance directive or information regarding the location of an advance directive that is accessible to principals and agents and, as needed, to individuals appointed to arrange for the disposition of remains, procurement organizations, health care providers, health care facilities, residential care facilities, funeral directors, crematory operators, cemetery officials, probate court officials, and the employees thereof.

~~(28)~~(29) "Residential care facility" means a residential care home or an assisted living residence as those terms are defined in section 7102 of Title 33.

~~(29)~~(30) "Resuscitate" or "resuscitation" includes chest compressions and mask ventilation; intubation and ventilation; defibrillation or cardioversion; and emergency cardiac medications provided according to the guidelines of the American Heart Association's Cardiac Life Support program.

~~(30)~~(31) "Suspend" means to terminate the applicability of all or part of an advance directive for a specific period of time or while a specific condition exists.

* * * Clarifying Confusing Language on Calculation of Penalties * * *

Sec. 13. 18 V.S.A. § 4234 is amended to read:

§ 4234. DEPRESSANT, STIMULANT, AND NARCOTIC DRUGS

(a) Possession.

(1) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, shall be imprisoned not more than one year or fined not more than $2,000.00, or both.

(2) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, consisting of ~~one hundred~~ 100 times a ~~recommended individual therapeutic~~ benchmark unlawful dosage or its equivalent as determined by the board of health by rule shall be imprisoned not more than five years or fined not more than $25,000.00, or both.

(3) A person knowingly and unlawfully possessing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, consisting of ~~one thousand~~ 1,000 times a ~~recommended individual therapeutic~~ benchmark unlawful dosage or its equivalent as determined by the board of health by rule shall be imprisoned not more than ten years or fined not more than $100,000.00, or both.

(4) A person knowingly and unlawfully possessing a depressant, stimulant or narcotic drug, other than heroin or cocaine, consisting of ~~ten thousand~~ 10,000 times a ~~recommended individual therapeutic~~ benchmark unlawful dosage or its equivalent as determined by the board of health by rule shall be imprisoned not more than 20 years or fined not more than $500,000.00, or both.

(b) Selling or dispensing.

(1) A person knowingly and unlawfully dispensing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, shall be imprisoned not more than three years or fined not more than $75,000.00, or both. A person knowingly and unlawfully selling a depressant, stimulant or narcotic drug, other than cocaine or heroin, shall be imprisoned not more than five years or fined not more than $25,000.00, or both.

(2) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, consisting of ~~one-hundred~~ 100 times a ~~recommended individual therapeutic~~ benchmark unlawful dosage or its equivalent as determined by the board of health by rule shall be imprisoned not more than ten years or fined not more than $100,000.00, or both.

(3) A person knowingly and unlawfully selling or dispensing a depressant, stimulant, or narcotic drug, other than heroin or cocaine, consisting of ~~one-thousand~~ 1,000 times a ~~recommended individual therapeutic~~ benchmark unlawful dosage or its equivalent as determined by the board of health by rule shall be imprisoned not more than 20 years or fined not more than $500,000.00, or both.

Sec. 14. RULEMAKING

The department of health shall amend, by rule, all references to the recommended individual therapeutic dosage as specified in Sec. 13 of this act.

* * * Report on Death Statistics * * *

Sec. 15. 18 V.S.A. § 5208 is added to read:

§ 5208. HEALTH DEPARTMENT; REPORT ON STATISTICS

Beginning October 1, 2011 and every two years thereafter, the Vermont department of health shall report to the house committee on human services and the senate committee on health and welfare regarding the number of persons who died during the preceding two calendar years in hospital emergency rooms, other hospital settings, in their own homes, in a nursing home, in a hospice facility, and in any other setting for which information is available, as well as whether each decedent received hospice care within the last 30 days of his or her life. Beginning with the 2013 report, the department shall include information on the number of persons who died in hospital intensive care units, assisted living facilities, or residential care homes during the preceding two calendar years.

* * * Choices for Care * * *

Sec. 16. ELIGIBILITY FOR CHOICES FOR CARE AND HOSPICE CARE

The department of disabilities, aging, and independent living shall investigate the feasibility of allowing Vermonters to receive services under the

state's Choices for Care program while also receiving hospice benefits under Medicaid or Medicare. No later than January 15, 2010, the department shall report its findings and recommendations regarding simultaneous eligibility to the house committee on human services and the senate committee on health and welfare.

* * * Palliative Care and Pain Management Task Force * * *

Sec. 17. PALLIATIVE CARE AND PAIN MANAGEMENT TASK FORCE

(a) The general assembly requests that the Vermont Ethics Network, Inc. convene a task force to coordinate palliative care and pain management initiatives in Vermont, help people to gain access to services, and propose solutions to address gaps in services.

(b) Contingent upon the ability of the task force to secure funding, beginning January 15, 2010 and annually thereafter, the task force is requested to report to the house committee on human services and the senate committee on health and welfare regarding its activities, progress, and recommendations for legislative and nonlegislative action.

* * * Continuing Medical Education * * *

Sec. 18. BOARD OF MEDICAL PRACTICE REPORT

No later than January 15, 2010, the Vermont board of medical practice shall report to the house committee on human services and the senate committee on health and welfare regarding its recommendations for improving the

knowledge and practice of health care professionals in Vermont with respect to palliative care and pain management. Topics the board shall consider include:

(1) Continuing medical education requirements;

(2) Use of live, interactive training programs;

(3) Participation in training programs as a condition of hospital credentialing; and

(4) Appropriate frequency and intensity of training for different practitioner fields of practice.