

1 H.874

2 Introduced by Committee on Human Services

3 Date:

4 Subject: Health; health care decisions; hospice care; DNR; COLST

5 Statement of purpose of bill as introduced: This bill proposes to allow a  
6 patient's family member or person with a known close relationship to a patient  
7 to elect hospice care on behalf of a patient with no available agent or guardian.  
8 It would also delay until July 1, 2016 a provision directing the Department of  
9 Health to adopt rules regarding persons other than a patient, agent, or guardian  
10 giving informed consent for a DNR/COLST order.

11 An act relating to consent for admission to hospice care and for  
12 DNR/COLST orders

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

14 Sec. 1. 18 V.S.A. § 9710 is added to read:

15 § 9710. CONSENT FOR HOSPICE CARE

16 (a) A family member of a patient or a person with a known close  
17 relationship to the patient may elect hospice care on behalf of the patient if the  
18 patient does not have an agent or guardian or the patient's agent or guardian, or  
19 both, if applicable, are unavailable. Decisions made by the family member or  
20 person with a known close relationship shall protect the patient's own wishes

1 in the same manner as decisions made by an agent as described in subsection  
2 9711(d) of this title.

3 (b) As used in this section, “hospice care” means a program of care and  
4 support provided by a Medicare-certified hospice provider to help an  
5 individual with a terminal condition to live comfortably by providing palliative  
6 care, including effective pain and symptom management. Hospice care may  
7 include services provided by an interdisciplinary team that are intended to  
8 address the physical, emotional, psychosocial, and spiritual needs of the  
9 individual and his or her family.

10 ~~Sec. 2. 18 V.S.A. § 9708(f) is amended to read:~~

11 ~~(f) The Department of Health shall adopt by rule no later than July 1, 2014~~  
12 ~~2016, criteria for individuals who are not the patient, agent, or guardian, but~~  
13 ~~who are giving informed consent for a DNR/COLST order. The rules shall~~  
14 ~~include the following:~~

15 ~~(1) other individuals permitted to give informed consent for a~~  
16 ~~DNR/COLST order who shall be a family member of the patient or a person~~  
17 ~~with a known close relationship to the patient;~~

18 ~~(2) parameters for how decisions should be made, which shall include at~~  
19 ~~a minimum the protection of a patient’s own wishes in the same manner as in~~  
20 ~~section 9711 of this title; and~~

1 ~~(3) access to a hospital's internal ethics protocols for use when there is a~~  
2 ~~disagreement over the appropriate person to give informed consent.~~

*Sec. 2. 18 V.S.A. § 9708(f) is amended to read:*

*(f) The Department of Health shall adopt by rule ~~no later than~~ on or before July 1, ~~2014~~ 2016, criteria for individuals who are not the patient, agent, or guardian, but who are giving informed consent for a DNR/COLST order. The rules shall include the following:*

*(1) other individuals permitted to give informed consent for a DNR/COLST order who shall be a family member of the patient or a person with a known close relationship to the patient; and*

*(2) parameters for how decisions should be made, which shall include at a minimum the protection of a patient's own wishes in the same manner as in section 9711 of this title; ~~and~~*

*~~(3) access to a hospital's internal ethics protocols for use when there is a disagreement over the appropriate person to give informed consent.~~*

*Sec. 3. 14 V.S.A. § 3075(g) is amended to read:*

*(g)(1) The guardian shall obtain prior written approval by the ~~probate division~~ Probate Division of the ~~superior court~~ Superior Court following notice and hearing:*

*(A) if the person under guardianship objects to the guardian's decision, on constitutional grounds or otherwise;*

*(B) if the ~~court~~ Court orders prior approval for a specific surgery, procedure, or treatment, either in its initial order pursuant to subdivision 3069(c)(2) of this title or anytime after appointment of a guardian;*

*(C) except as provided in subdivision (2) of this subsection, and unless the guardian is acting pursuant to an advance directive, before withholding or withdrawing life-sustaining treatment other than antibiotics; or*

*(D) unless the guardian is acting pursuant to an advance directive, before consenting to a do-not-resuscitate order or clinician order for life-sustaining treatment, as defined in 18 V.S.A. § 9701(6), unless a clinician as defined in 18 V.S.A. § 9701(5) certifies that the person under guardianship is likely to experience cardiopulmonary arrest before ~~court~~ Court approval can be obtained. In such circumstances, the guardian shall immediately notify the ~~court~~ Court of the need for a decision, shall obtain the clinician's certification prior to consenting to the do-not-resuscitate order or clinician order for life-sustaining treatment, and shall file the clinician's certification with the ~~court~~ Court after consent has been given.*

*(2) The requirements of subdivision (1)(C) of this subsection shall not apply if obtaining a ~~court~~ Court order would be impracticable due to the need for a decision before ~~court~~ Court approval can be obtained. In such circumstances, the guardian shall immediately notify the ~~court~~ Court by*

*telephone of the need for a decision, and shall notify the ~~court~~ Court of any decision made.*

*Sec. 4. 18 V.S.A. § 9701 is amended to read:*

*§ 9701. DEFINITIONS*

*As used in this chapter:*

*\* \* \**

*(11) “Guardian” means a person appointed by the Probate Division of the Superior Court who has the authority to make medical decisions pursuant to 14 V.S.A. § 3069**~~(b)~~(c)**.*

*\* \* \**

*Sec. 5. 18 V.S.A. § 9708 is amended to read:*

*§ 9708. ~~AUTHORITY AND OBLIGATIONS OF HEALTH CARE PROVIDERS, HEALTH CARE FACILITIES, AND RESIDENTIAL CARE FACILITIES REGARDING DO-NOT-RESUSCITATE ORDERS AND CLINICIAN ORDERS FOR LIFE-SUSTAINING LIFE-SUSTAINING TREATMENT~~*

*(a) As used in this section, “DNR/COLST” shall mean a do-not-resuscitate order (“DNR”) and a clinician order for ~~life-sustaining~~ life-sustaining treatment (“COLST”) as defined in section 9701 of this title.*

*(b) A DNR order and a COLST shall be issued on the Department of Health's "Vermont DNR/COLST form" as designated by rule by the Department of Health.*

*(c) Notwithstanding subsection (b) of this section, health care facilities and residential care facilities may document DNR/COLST orders in the patient's medical record in a facility-specific manner when the patient is in their care.*

*(d) A DNR order must:*

*(1) be signed by the patient's clinician;*

*(2) certify that the clinician has consulted, or made an effort to consult, with the patient, and the patient's agent or guardian, if there is an appointed agent or guardian;*

*(3) include either:*

*(A) the name of the patient; agent; guardian, in accordance with 14 V.S.A. § 3075(g); or other individual giving informed consent for the DNR and the individual's relationship to the patient; or*

*(B) certification that the patient's clinician and one other named clinician have determined that resuscitation would not prevent the imminent death of the patient, should the patient experience cardiopulmonary arrest; and*

*(4) if the patient is in a health care facility or a residential care facility, certify that the requirements of the facility's DNR protocol required by section 9709 of this title have been met.*

*(e) A COLST must:*

*(1) be signed by the patient's clinician; and*

*(2) include the name of the patient; agent; guardian, in accordance with 14 V.S.A. § 3075(g); or other individual giving informed consent for the COLST and the individual's relationship to the patient.*

\* \* \*

1      Sec. ~~3~~6. EFFECTIVE DATE

2      This act shall take effect on passage.