

To: Peter Cobb

The present reality for Hospice is that many people are referred to us when they are in the active stages of dying. They reside in their individual homes, community care homes, and nursing homes. Often, they are being cared for by a friend or family member who has not been appointed legal guardian or durable power of attorney for health care.

I am aware of several bills (H.567 and a draft bill by Rep. Haas) that have been drafted which address the issue of who can consent to Hospice care when the patient lacks a legal representative and does not have physical or mental capacity to do so.

The Hospice Medicare Conditions of Participation state that “An individual who meets the eligibility requirement for Hospice may file an election statement with a particular Hospice. If the individual is physically or mentally incapacitated, his or her *representative* may file the election statement.”

*Representative* means an individual who has the authority under State law (whether by statute or pursuant to an appointment by the courts of the State) to authorize or terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill patient who is mentally or physically incapacitated. This may include a legal guardian.

Currently in Vermont, “**legal representative**” is defined as *health care agent (as appointed in the Advance Directive – or DPOA) or legal guardian*. I recommend that legislation that is drafted clearly indicate that individuals “or surrogates” as defined in H. 567 and the committee bill would be considered “legal representatives” for the purpose of providing consent to Hospice care.

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