

VERMONT MEDICAL SOCIETY

To: Senate Health & Welfare Committee

From: Madeleine Mongan, Deputy EVP, Vermont Medical Society

Date: April 2, 2014

Re: VMS Comments on H. 874 Hospice Consent

The Vermont Medical Society strongly supports Section 1 of H. 874 as it passed the House. In Section 2, VMS supports extending the deadline for rulemaking to authorize family members or persons with a close relationship to a patient to consent to Do Not Resuscitate (DNR) Orders and Clinician Orders for Life Sustaining Treatment (COLST), and to establish parameters for decision-making that will at a minimum be consistent with the requirements for agents making decisions for patients with advance directives. VMS supports removing subdivision (3) of Section 2 from the bill, which addresses internal ethics protocols, consistent with the recommendation of the Vermont Ethics Network.

Section 1 will clarify and standardize the existing practice of permitting family, and in some cases individuals with a close relationship to a patient, to consent to hospice admission when the person is unable to consent, and the patient does not have an agent or guardian. Decisions made by a family member or individual with a close relationship must be consistent with the patient's known wishes. The decision-making standard is the same as the standard for agents (18 VSA § 9711) making decisions for patients who have made advance directives. Whenever possible, based on the patient's known wishes, the family member will make the decision that the patient would have made. When the patient's wishes are unknown, the family member must make the decision that is in the best interests of the patient.

Section 1 clarifies in state law that family and individuals who are close to a patient may consent to hospice admission. Since only about 30% of patients in Vermont have actually completed advance directives, and far fewer have guardians appointed by probate court to make health care decisions, this clarification is needed to ensure that the large majority of patients' are not denied access to hospice care when hospice admission is consistent with their known wishes or their best interests when their wishes are not known. Requiring a family to seek appointment of a guardian through probate court to make health care decisions for the patient could create a burden for family members and the courts.

Section 2 extends the deadline for rulemaking by the Department of Health with respect to decision-making for DNR/COLST orders. The Vermont Medical Society has worked with the Department of Health and other stakeholders on drafting proposed rules and in the alternative on drafting a proposed bill that would clarify, the existing practice that permits family and individuals with a close relationship to a patient to consent to a DNR/COLST order when the patient does not have the ability to consent and does not have a guardian or an agent. VMS will continue to work with the Department of Health, the Vermont Ethics Network and other stakeholders on this issue.