SENATE PROPOSAL OF AMENDMENT

H. 201

An act relating to hospice and palliative care

The Senate proposes to the House to amend the bill as follows

First: By striking out the Sec. 3 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 3 to read as follows:

Sec. 3. REQUEST FOR A WAIVER

By no later than July 1, 2012, the agency of human services shall include as a part of its application request for a demonstration project from the Centers for Medicare and Medicaid Services to integrate care for dual eligible individuals the additional proposal of allowing the state to provide for an "enhanced hospice access" benefit, whereby the definition of "terminal illness" is expanded from six months' life expectancy to that of 12 months and participants may access hospice without being required to first discontinue curative therapy. Also, by no later than July 1, 2013, the agency of human services shall submit a Global Commitment Medicaid waiver amendment to provide funding for the same enhanced hospice access benefit.

Second: In Sec. 4, subsection (c), by striking out the following: "Assembly of Home Health Agencies, Inc." and inserting in lieu thereof the following: Vermont Assembly of Home Health and Hospice Agencies

Third: By striking out Sec. 7 in its entirety and inserting in lieu thereof a new section to be numbered Sec. 7 to read as follows:

Sec. 7. 26 V.S.A. § 1400 is amended to read:

§ 1400. RENEWAL OF LICENSE; CONTINUING MEDICAL EDUCATION

(a) Every person licensed to practice medicine ~~and surgery~~ by the board shall apply biennially for the renewal of his or her license. ~~One~~ At least one month prior to the date on which renewal is required, the board shall send to each licensee a license renewal application form and notice of the date on which the existing license will expire. On or before the renewal date, the licensee shall file an application for license renewal and pay the required fee. The board shall register the applicant and issue the renewal license. Within one month following the date renewal is required, the board shall pay the license renewal fees into the medical practice board special fund ~~and shall file a list of licensees with the department of health~~.

(b) A licensee applying for renewal of an active license to practice medicine shall have completed continuing medical education which shall meet minimum criteria as established by rule, by the board, by August 31, 2012 and which shall be in effect for the renewal of licenses to practice medicine

expiring after August 31, 2014. The board shall require a minimum of ten hours of continuing medical education by rule. The training provided by the continuing medical education shall be designed to ensure that the licensee has updated his or her knowledge and skills in his or her own specialties and also has kept abreast of advances in other fields for which patient referrals may be appropriate. The board shall require evidence of current professional competence in recognizing the need for timely appropriate consultations and referrals to ensure fully informed patient choice of treatment options, including treatments such as those offered by hospice, palliative care, and pain management services.

(c) A licensee applying for renewal of an active license to practice medicine shall have practiced medicine within the last three years as defined in section 1311 of this title or have complied with the requirements for updating knowledge and skills as defined by board rules.

(d) A licensee shall demonstrate that the requirements for licensure are met.

(e) A licensee shall promptly provide the board with new or changed information pertinent to the information in his or her license and license renewal applications at the time he or she becomes aware of the new or changed information.

~~(b)~~(f) A person who practices medicine ~~and surgery~~ and who fails to renew his or her license in accordance with the provisions of this section shall be deemed an illegal practitioner and shall forfeit the right to so practice or to hold himself or herself out as a person licensed to practice medicine ~~and surgery~~ in the state until reinstated by the board, but nevertheless a ~~person who was licensed to practice medicine and surgery at the time of his induction, call on reserve commission or enlistment into the armed forces of the United States, shall be entitled to practice medicine and surgery during the time of his service with the armed forces of the United States and for 60 days after separation from such service~~ physician while on extended active duty in the uniformed services of the United States or as a member of the national guard, state guard, or reserve component who is licensed as a physician at the time of an activation or deployment shall receive an extension of licensure up to 90 days following the physician's return from activation or deployment, provided the physician notifies the board of his or her activation or deployment prior to the expiration of the current license and certifies that the circumstances of the activation or deployment impede good faith efforts to make timely application for renewal of the license.

~~(c)~~(g) Any person who allows a license to lapse by failing to renew the same in accordance with the provisions of this section may be reinstated by the board by payment of the renewal fee and the late renewal penalty, and if applicable, by completion of the continuing medical education requirement as

established in subsection (b) of this section and any other requirements for licensure as required by this section and board rule.

Fourth: In Sec. 8, after the following "set forth in 26 V.S.A." by striking out the following: "§ 1400(b)(1) and (2), in the field of field of palliative care, hospice, end-of-life care, and management of chronic pain" and inserting in lieu thereof the following: § 1400(b)

Fifth: In Sec. 10, 18 V.S.A. § 9708, by striking subsection (f) in its entirety. And by relettering the remaining subsections in Sec. 10 to be alphabetically correct

Sixth: In Sec. 10, 18 V.S.A. § 9708, by striking relettered subsection (g) in its entirety and inserting in lieu thereof a new subsection (g) to read as follows:

~~(b)~~(g) A clinician who issues a DNR order ~~may~~ shall authorize issuance of a DNR identification to the ~~principal~~ patient. Uniform minimum requirements for DNR identification shall be determined by rule by the department of health no later than March 1, 2012.

Seventh: In Sec. 10, 18 V.S.A. § 9708, by inserting a new subsection to be lettered subsection (i) to read as follows:

(i) A DNR/COLST order executed prior to July 1, 2011 shall be a valid order if the document complies with the statutory requirements in effect at the time the document was executed or with the provisions of this chapter.

And by relettering the remaining subsections in Sec. 10 to be alphabetically correct.

Eighth: By inserting a new section to be numbered Sec. 11 to read as follows:

* * * STUDY ON DNR/COLST ORDER INFORMED CONSENT * * *

SEC. 11. STUDY ON DNR/COLST ORDER INFORMED CONSENT

(a) The DNR/COLST order informed consent committee is created and shall be convened by the commissioner of health to study criteria to be used for rules concerning individuals who are giving informed consent for a DNR/COLST order issued pursuant to 18 V.S.A. § 9708(b), but who are not the patient, the patient's agent, or the patient's guardian.

(b) The committee shall consist of the following members or their designees:

(1) The commissioners of health; Vermont health access; and disabilities, aging, and independent living;

(2) one representative each from the Vermont Medical Society, the Vermont Ethics Network, the Vermont Association of Hospitals and Health Systems, Vermont Program for Quality in Health Care, the Hospice and

Palliative Care Council of Vermont, the Vermont Center for Independent Living, Vermont Area Agencies on Aging, Vermont Assembly of Home Health and Hospice Agencies, and the Vermont Health Care Association;

(3) the long term care ombudsman; and

(4) the state health care ombudsman.

(c) The committee shall make recommendations on the criteria to be used for rules concerning individuals who are giving informed consent for a DNR/COLST order to be issued pursuant to 18 V.S.A. § 9708(b), but who are not the patient, the patient's agent, or the patient's guardian. The committee's recommendations shall include:

(1) which individual or individuals who are not the patient, the patient's agent, or the patient's guardian, but who shall be a family member of the patient or a person with a known close relationship to the patient, are permitted to give informed consent for a DNR/COLST order;

(2) how decisions regarding who is the appropriate person to be giving informed consent for a DNR/COLST order are to be made, which shall include at a minimum the protection of a patient's own wishes in the same manner as set forth in 18 V.S.A. § 9711,

(3) the use of a hospital's internal ethics protocols when there is a disagreement over who is the appropriate person to give informed consent for a DNR/COLST order; and

(4) an examination of the relationship between the wishes expressed in an advance directive and the DNR/COLST order.

(d) The committee shall report by December 1, 2011 to the Vermont health access oversight committee, the chair of the house committee on human services, and the chair of the senate committee on health and welfare on its findings and recommendations.

And by renumbering all remaining sections to be numerically correct.

Ninth: In renumbered Sec. 12, 18 V.S.A. § 9709, subsection (c), by striking out subdivision (5) in its entirety and inserting in lieu thereof new subdivisions (5) and (6) to read as follows:

(5) Upon transfer or discharge ~~from the~~ to another facility, a copy of any advance directive, DNR order, ~~and clinician order for life sustaining treatment is~~ or COLST order shall be transmitted with the principal ~~or, if~~ or patient. If the transfer is to a health care facility or residential care facility, ~~is~~ any advance directive, DNR order, or COLST order shall be promptly transmitted to the subsequent facility, unless the sending facility has confirmed that the receiving facility has a copy of ~~any~~ the advance directive, DNR order, or ~~clinician order for life sustaining treatment~~ COLST order.

(6) For a patient for whom DNR/COLST orders are documented in a facility-specific manner, any DNR/COLST orders to be continued upon discharge, during transport, or in another setting shall be documented on the Vermont DNR/COLST form issued pursuant to 18 V.S.A. § 9708(b) or on the form as prescribed by the patient's state of residence.

Tenth: By inserting a new section to be numbered Sec. 13 to read as follows:

Sec. 13. 18 V.S.A. § 9713 is amended to read:

§ 9713. IMMUNITY

(a) No individual acting as an agent or guardian shall be subjected to criminal or civil liability for making a decision in good faith pursuant to the terms of an advance directive, or DNA order, or COLST order and the provisions of this chapter.

(b)(1) No health care provider, health care facility, residential care facility, or any other person acting for or under such person's control shall, if the provider or facility has complied with the provisions of this chapter, be subject to civil or criminal liability for:

(A) providing or withholding ~~health care~~ treatment or services in good faith pursuant to the direction of a principal or patient, the provisions of an advance directive, a DNA order, a COLST order, a DNR identification ~~of the principal~~, the consent of a principal or patient with capacity or of the principal's or patient's agent or guardian, or a decision or objection of a principal or patient; or

(B) relying in good faith on a suspended or revoked advance directive, suspended or revoked DNR order, or suspended or revoked COLST order, unless the provider or facility knew or should have known of the suspension or revocation.

(2) No funeral director, crematory operator, cemetery official, procurement organization, or any other person acting for or under such person's control, shall, if the director, operator, official, or organization has complied with the provisions of this chapter, be subject to civil or criminal liability for providing or withholding its services in good faith pursuant to the provisions of an advance directive, whether or not the advance directive has been suspended or revoked.

(3) Nothing in this subsection shall be construed to establish immunity for the failure to follow standards of professional conduct and to exercise due care in the provision of services.

(c) No employee shall be subjected to an adverse employment decision or evaluation for:

(1) providing or withholding ~~health care~~ treatment or services in good faith pursuant to the direction of a principal or patient, the provisions of an advance directive, a DNR order, a COLST order, a DNR identification ~~of the principal~~, the consent of the ~~principal's~~ principal or patient with capacity or principals or patient's agent or guardian, a decision or objection of a principal or patient, or the provisions of this chapter. This subdivision shall not be construed to establish a defense for the failure to follow standards of professional conduct and to exercise due care in the provision of services;

(2) relying on an amended, suspended, or revoked advance directive, unless the employee knew or should have known of the amendment, suspension or revocation; or

(3) providing notice to the employer of a moral or other conflict pursuant to subdivision 9707(b)(3) of this title, so long as the employee has provided ongoing health care until a new employee or provider has been found to provide the services.

And by renumbering all remaining sections to be numerically correct.

Eleventh: In renumbered Sec. 15, after the following: "This act shall take effect on passage" by inserting the following: , except for Sec. 7, 26 V.S.A. § 1400(c), which shall take effect 60 days after the adoption of the maintenance of licensure rule for physicians