



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

To: House Committee on Human Services
From: Jennifer G. Carbee, Legislative Counsel
Date: April 28, 2014
Subject: H.874 - Senate Proposal of Amendment

Here is a summary of the Senate Proposal of Amendment to H.874, An act relating to consent for admission to hospice care and for DNR/COLST orders.

Sec. 1 - Consent for hospice care

The Senate did not make any changes to the Sec. 1 as it passed the House. By way of reminder, that section:

- Allows a family member or person with a known close relationship to a patient to consent to admit the patient to hospice care if the patient does not have an agent or guardian, or if the agent/guardian is unavailable
- Specifies that decisions made by the family member or person with a known close relationship must protect the patient's own wishes in the same manner as an agent's decisions under the advance directive statutes

Sec. 2. Health Department rulemaking

The Senate did not change the House-passed provision delaying from July 1, 2014 until July 1, 2016 the deadline for the Health Department to adopt rules for criteria for someone other than the patient, agent, or guardian to give informed consent for a DNR order or COLST. The Senate did, however, amend Sec. 2 to delete the requirement that the rules address access to a hospital's internal ethics protocols for use when there is a disagreement over the appropriate person to give informed consent. There was testimony from the hospitals and other interested parties that hospitals do not have "internal ethics protocols" and that nobody really knew what that phrase was supposed to mean.

Sec. 3. Court approval for guardian to consent to a COLST

This provision was added on the Senate floor - it adds to the Title 14 guardianship chapter a requirement that a guardian obtain court approval (except in an emergency) before consenting to a COLST. This requirement for court approval already applies to a guardian's consent for a DNR order and Title 14 is silent on COLST, perhaps because they are not as well-known as DNR orders. Adding COLST to this section would have them treated the same under guardianship law, as they currently are under advance

directive law. The court approval only applies to guardians, not to agents or other persons providing informed consent.

Sec. 4. Definition of “guardian” in advance directive chapter

This provision was added on the Senate floor - it corrects a cross-reference in the Title 18 advance directive chapter definition of “guardian” because the applicable section in Title 14 was revised but the cross-reference not updated. It is a technical correction.

Sec. 5. Cross reference to guardianship chapter

This provision was also added on the Senate floor - it specifically references the Title 14 guardianship chapter provision on court approval in the Title 18 advance directive chapter provisions allowing a patient, agent, guardian, or other person to consent to a DNR or COLST. It says that a guardian giving informed consent for a DNR or COLST must be acting in accordance with the guardianship chapter requirement for court approval. It is not a substantive change. I also edited the title of the section, which was both unnecessarily long and not really accurate.

Sec. 6. Effective date

The act would still take effect on passage.