

Testimony to Senate Health and Welfare Committee
Wednesday, March 11, 2015
S.62 *Surrogate Decision Making for DNR/COLST* Draft 1.1
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- I. The Department supports the bill for the following reasons:
1. S.62 represents sound public policy outlining a process for obtaining consent for only DNR/COLST for people who:
 - Lack capacity, and
 - Have no agent identified by an Advance Directive or
 - Have no appointed guardian.
 2. Resolves in statute three issues that otherwise would have been addressed in VDH rule:
 1. Who can serve as a surrogate in the situations identified in #1 above.
 2. Immunity for surrogates.
 3. Surrogate access to information such as medical records of the patient.

These three issues would be more appropriately addressed in statute than in rules.

The Department does have one suggestion for a change in the effective date- discussed below.

- II. S.62 represents almost four years of work by a group of key stakeholders concerned with the legal, clinical and ethical implications of not having a policy for obtaining consent for DNR/COLST. The group has also discussed the minimum requirements for DNR identification, and issue that the Department must address in rule. The group reviewed S.62, as introduced and provided detailed feedback which culminated in S.62, Draft 1.1. The members of the group included:

- Medical Society
- Legal Aid- LTC and Health Care Ombudsmen
- Nursing Homes
- Department of Health
- Home Health Agencies
- Vermont Ethics Network
- Clinical Ethicists

- III. Both the Department and DAIL recommend that the effective date of this bill be changed from *upon passage* to *January 1, 2016*. The rationale for this suggestion is based on the following:

A January 1, 2016 effective date would:

- Allow for time to educate providers and facilities about this newly enacted law.
- Allow time for DAIL to amend its nursing home rules.
- Allow time for the Department of Health to work on rule for ID minimum requirements