

**S.62 - SH&W strike-all amendment with additional amendments in
bold/~~strikethrough~~**

1 Sec. 1. 18 V.S.A. chapter 231 is amended to read:

2 CHAPTER 231. ADVANCE DIRECTIVES FOR
3 HEALTH CARE ~~AND~~, DISPOSITION OF REMAINS,
4 AND SURROGATE DECISION MAKING

5 § 9700. PURPOSE AND POLICY

6 The ~~state~~ State of Vermont recognizes the fundamental right of an adult to
7 determine the extent of health care the individual will receive, including
8 treatment provided during periods of incapacity and at the end of life. This
9 chapter enables adults to retain control over their own health care through the
10 use of advance directives, including appointment of an agent and directions
11 regarding health care and disposition of remains. During periods of incapacity,
12 the decisions by the agent shall be based on the express instructions, wishes, or
13 beliefs of the individual, to the extent those can be determined. This chapter
14 also allows, in limited circumstances in which a patient without capacity has
15 neither an agent nor a guardian, for a surrogate to provide or withhold consent
16 on the patient's behalf for a do-not-resuscitate order or clinician order for
17 life-sustaining treatment.

18 § 9701. DEFINITIONS

19 As used in this chapter:

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(17) “Informed consent” means the consent given voluntarily by an individual with capacity, on his or her own behalf or on behalf of another in the role of an agent, guardian, or surrogate, after being fully informed of the nature, benefits, risks, and consequences of the proposed health care, alternative health care, and no health care.

(18) “Interested individual” means:

(A) the principal’s or patient’s spouse, adult child, parent, adult sibling, adult grandchild, ~~reciprocal beneficiary~~, or clergy person; or

(B) any adult who has exhibited special care and concern for the principal or patient and who is personally familiar with the principal’s or patient’s values.

(19) “Life sustaining treatment” means any medical intervention, including nutrition and hydration administered by medical means and antibiotics, which is intended to extend life and without which the principal or patient is likely to die.

* * *

(31) “DNR/COLST” means a do-not-resuscitate order (DNR) or a clinician order for life-sustaining treatment (COLST), or both.

1 (d) A DNR order must:

2 (1) be signed by the patient's clinician;

3 (2) certify that the clinician has consulted, or made an effort to consult,
4 with the patient, and the patient's agent or guardian, if there is an appointed
5 agent or guardian;

6 (3) include either:

7 (A) the name of the patient; agent; guardian, in accordance with
8 14 V.S.A. § 3075(g); or ~~other individual~~ surrogate giving informed consent for
9 the DNR and the individual's relationship to the patient; or

10 (B) certification that the patient's clinician and one other named
11 clinician have determined that resuscitation would not prevent the imminent
12 death of the patient, should the patient experience cardiopulmonary arrest; and

13 (4) if the patient is in a health care facility or a residential care facility,
14 certify that the requirements of the facility's DNR protocol required by section
15 9709 of this title have been met.

16 (e) A COLST must:

17 (1) be signed by the patient's clinician; and

18 (2) include the name of the patient; agent; guardian, in accordance with
19 14 V.S.A. § 3075(g); or ~~other individual~~ surrogate giving informed consent for
20 the COLST and the individual's relationship to the patient.

1 (f) ~~The Department of Health shall adopt by rule on or before July 1, 2016,~~
2 ~~criteria for individuals who are not the patient, agent, or guardian, but who are~~
3 ~~giving informed consent for a DNR/COLST order. The rules shall include the~~
4 ~~following:~~

- 5 (1) ~~other individuals permitted to give informed consent for a~~
6 ~~DNR/COLST order who shall be a family member of the patient or a person~~
7 ~~with a known close relationship to the patient; and~~
8 (2) ~~parameters for how decisions should be made, which shall include at~~
9 ~~a minimum the protection of a patient's own wishes in the same manner as in~~
10 ~~section 9711 of this title. [Repealed.]~~

11 (g) A patient's clinician issuing a DNR/COLST order shall:

12 (1) place a copy of the completed DNR/COLST order in the patient's
13 medical record; and

14 (2) provide instructions to the patient as to the appropriate means of
15 displaying the DNR/COLST order.

16 (h) A clinician who issues a DNR order shall authorize issuance of a DNR
17 identification to the patient. Uniform minimum requirements for DNR
18 identification shall be determined ~~by rule~~ by the Department of Health by rule
19 no later than ~~July 1, 2014~~ January 1, 2016.

20 * * *

21 § 9713. IMMUNITY

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

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

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

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

18 (2) ~~No~~ A funeral director, crematory operator, cemetery official,
19 procurement organization, or any other person acting for or under such
20 person's control, shall, if the director, operator, official, or organization has
21 complied with the provisions of this chapter, not be subject to civil or criminal

1 liability for providing or withholding its services in good faith pursuant to the
2 provisions of an advance directive, whether or not the advance directive has
3 been suspended or revoked.

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

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

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

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

20 (3) ~~providing~~ Providing notice to the employer of a moral or other
21 conflict pursuant to subdivision 9707(b)(3) of this title, so long as the

1 employee has provided ongoing health care until a new employee or provider
2 has been found to provide the services.

3 * * *

4 Subchapter 2. Surrogate Consent

5 § 9731. INFORMED CONSENT BY SURROGATE FOR DNR/COLST

6 ORDER

7 (a)(1) One or more interested individuals may be eligible to act as the
8 surrogate for an adult without capacity in order to provide or withhold
9 informed consent for a do-not-resuscitate order or clinician order for
10 life-sustaining treatment pursuant to this subchapter. Only one ~~surrogate~~
11 interested individual may act as a surrogate at a time.

12 (2)(A) A patient's health care provider shall not be considered an
13 interested individual and shall not serve as a patient's surrogate to provide or
14 withhold informed consent for a DNR/COLST order pursuant to this chapter
15 unless related to the patient by blood, marriage, civil union, or adoption.

16 (B) The owner, operator, employee, agent, or contractor of a
17 residential care facility, health care facility, or correctional facility in which the
18 patient resides at the time the DNR/COLST order is written shall not be
19 considered an interested individual and shall not act as the patient's surrogate
20 to provide or withhold consent for a DNR/COLST order pursuant to this

1 chapter unless related to the patient by blood, marriage, civil union, or
2 adoption.

3 (b) A surrogate may provide or withhold informed consent only if all of the
4 following conditions are met:

5 (1) the patient's clinician determines that the patient lacks capacity to
6 provide informed consent;

7 (2) the patient has not appointed an agent through an advance directive;

8 (3) the patient has not indicated in an advance directive that the
9 interested individual or individuals seeking to serve as surrogate should not be
10 consulted on health care decisions or otherwise provided instructions in an
11 advance directive contrary to allowing such individual or individuals to serve
12 as surrogate;

13 (4) the patient does not have a guardian who is authorized to make
14 health care decisions; and

15 (5) the patient does not object to the surrogate providing or withholding
16 consent for a DNR/COLST order **or to the treatment to be provided**
17 **pursuant to a DNR/COLST order**, even if the patient lacks capacity.

18 (c)(1) A surrogate shall be an interested individual who is designated by the
19 patient by personally informing the patient's clinician. If the patient designates
20 a surrogate to the clinician orally, the clinician shall document the designation
21 in the patient's medical record at the time the designation is made.

1 (2) If the patient has not designated a surrogate pursuant to subdivision
2 (1) of this subsection, or if the surrogate designated by the patient is not
3 reasonably available or is unwilling to serve, then **the patient's clinician shall**
4 **make a reasonable attempt to notify all interested individuals of the need**
5 **for a surrogate to make a decision regarding whether to provide or**
6 **withhold consent for a DNR/COLST order. A a surrogate shall be an**
7 interested individual who is:

8 (A) willing to provide or withhold informed consent for a
9 DNR/COLST order for the patient in accordance with the patient's wishes and
10 values, if known; and

11 (B) willing and available to consult with the patient's clinician.

12 (3) Notwithstanding the provisions of subdivisions (1) and (2) of this
13 subsection, an individual shall not serve as a surrogate over the patient's
14 objection, even if the patient lacks capacity.

15 (d) The patient's clinician, health care provider, or residential care provider
16 may rely on the decision of a surrogate identified pursuant to this section as
17 long as the clinician or provider documents in the patient's medical record that
18 the surrogate has confirmed that one of the following circumstances applies:

19 (1)(A) All interested individuals agree on the decision to provide or
20 withhold consent for a DNR/COLST order, in which case they shall designate
21 one surrogate, as well as an alternate, if available, who is authorized to provide

1 or withhold consent and whose name will be identified on the DNR/COLST
2 form and in the patient's medical record.

3 (B) All interested individuals agree that a specific interested
4 individual may make the decision regarding whether to provide or withhold
5 consent for a DNR/COLST order, in which case they shall designate the
6 individual as the surrogate, as well as an alternate, if available, who is
7 authorized to provide or withhold consent and whose name will be identified
8 on the DNR/COLST form and in the patient's medical record.

9 (C) The surrogate or alternate, if applicable, is not reasonably
10 available, in which case the clinician shall consult the interested individuals to
11 request designation of another surrogate and alternate.

12 (2) If at any time the interested individuals are unable to agree on the
13 designation of a surrogate, ~~any interested individual~~ **an interested person, as**
14 **defined in 14 V.S.A. § 3061,** may file a petition for guardianship in the
15 Probate Division of the Superior Court.

16 (e) A surrogate providing informed consent for a DNR/COLST order shall
17 use substituted judgment consistent with the patient's wishes and values and
18 consistent with the parameters described in subsection 9711(d) of this title.
19 The surrogate shall consult with the patient to the extent possible, and with the
20 patient's clinician and any other appropriate health care providers and shall

1 provide or withhold informed consent for a DNR/COLST order by attempting
2 to determine what the patient would have wanted under the circumstances.

3 (f) The patient's clinician shall make reasonable efforts to inform the
4 patient of any proposed treatment, or of any proposal to withhold or withdraw
5 treatment, based on the decisions made by the surrogate.

6 (g) If the patient's clinician determines that the patient no longer lacks
7 capacity and the DNR/COLST order was based on informed consent provided
8 by a surrogate, the clinician shall seek the informed consent of the patient for
9 any DNR/COLST order, which shall supersede the surrogate's consent.

10 (h) A surrogate shall have the same rights as a patient with capacity would
11 have to the following, to the extent that it is related to providing or withholding
12 informed consent for a DNR/COLST order:

13 (1) request, receive, review, and copy any oral or written information
14 regarding the patient's physical or mental health, including medical and
15 hospital records;

16 (2) participate in any meetings, discussions, or conferences concerning
17 health care decisions related to the patient;

18 (3) consent to the disclosure of health care information; and

19 (4) file a complaint on behalf of the patient regarding a health care
20 provider, health care facility, or residential care facility.

21 Sec. 2. 33 V.S.A. § 7306 is amended to read:

1 § 7306. RESIDENT'S REPRESENTATIVE

2 (a) ~~The~~ Except as provided in subsection (b) of this section, the rights and
3 obligations established under this chapter shall devolve to a resident's
4 ~~reciprocal beneficiary,~~ guardian, next of kin, sponsoring agency, or
5 representative payee (except when the facility itself is a representative payee)
6 if the resident:

7 (1) has been adjudicated incompetent;

8 (2) has been found by his or her physician to be medically incapable of
9 understanding or exercising the rights granted under this chapter; or

10 (3) exhibits a communication barrier.

11 (b) Notwithstanding the provisions of subsection (a) of this section, consent
12 for a do-not-resuscitate order or a clinician order for life-sustaining treatment
13 shall be provided or withheld only by the resident, by the resident's guardian
14 or agent, or by a surrogate designated pursuant to 18 V.S.A. chapter 231,
15 subchapter 2.

16 (c)(1) A resident's representative identified in subsections (a) and (b) of
17 this section shall make decisions for the resident by attempting to determine
18 what the resident would have wanted under the circumstances. In making the
19 determination, the resident's representative shall consider the following:

20 (A) the resident's specific instructions or wishes as expressed to a
21 spouse, adult child, parent, adult sibling, adult grandchild, clergy person,

1 health care provider, or any other adult who has exhibited specific care or
2 concern for the resident; and

3 (B) the representative's knowledge of the resident's personal
4 preferences, values, or religious or moral beliefs.

5 (2) If the resident's representative cannot determine what the resident
6 would have wanted under the circumstances, the representative shall make a
7 determination through an assessment of the resident's best interests. When
8 making a decision for the resident on this basis, the representative shall not
9 authorize the provision or withholding of health care on the basis of the
10 resident's economic status or a preexisting, long-term mental or physical
11 disability.

12 (3) When making a determination under this section, representatives
13 shall not consider their own interests, wishes, values, or beliefs.

14 (d) Notwithstanding the provisions of subsection (a) of this section, the
15 facility shall make every reasonable effort to communicate the rights and
16 obligations established under this chapter directly to the resident.

17 **Sec. 3. 14 V.S.A. § 3069(c) is amended to read:**

18 **(c) ~~The court~~ Court shall grant powers to the guardian in the least**
19 **restrictive manner appropriate to the circumstances of the respondent**
20 **and consistent with any advance directive. Guardianship powers shall be**
21 **ordered only to the extent required by the respondent's actual mental and**

1 adaptive limitations. The ~~court~~ Court shall specify which of the following
2 powers the guardian shall have and may further restrict each power so as
3 to preserve the respondent's authority to make decisions commensurate
4 with respondent's ability to do so:

5 * * *

6 (2) the power to seek, obtain, and give or withhold consent to the
7 initiation or continuation of medical or dental treatment, including a do-
8 not-resuscitate order or clinician order for life-sustaining treatment, as
9 defined in 18 V.S.A. § 9701. The power set forth in this subdivision is
10 granted subject to the provisions of section 3075 of this title and to any
11 constitutional right of the person under guardianship to refuse treatment,
12 provided that the ~~court~~ Court in its discretion may place limitations on the
13 guardian's ~~powers~~ power under this subdivision if appropriate under the
14 circumstances, including requiring prior ~~court~~ Court approval for specific
15 surgeries, procedures, or treatments;

16 * * *

17 Sec. 4. 14 V.S.A. § 3075(g) is amended to read:

18 (g)(1) The guardian shall obtain prior written approval by the Probate
19 Division of the Superior Court following notice and hearing:

20 * * *

1 **(D) unless the guardian is acting pursuant to an advance**
2 **directive or the authority to consent has been granted by the Court**
3 **pursuant to section 3069 of this title, before consenting to a do-not-**
4 **resuscitate order or clinician order for life-sustaining treatment, as**
5 **defined in 18 V.S.A. § 9701(6), unless a clinician as defined in 18 V.S.A. §**
6 **9701(5) certifies that the person under guardianship is likely to experience**
7 **cardiopulmonary arrest before Court approval can be obtained. In such**
8 **circumstances, the guardian shall immediately notify the Court of the**
9 **need for a decision, shall obtain the clinician’s certification prior to**
10 **consenting to the do-not-resuscitate order or clinician order for life-**
11 **sustaining treatment, and shall file the clinician’s certification with the**
12 **Court after consent has been given.**

13 **Sec. 5. RULEMAKING**

14 The Department of Disabilities, Aging, and Independent Living shall
15 amend its nursing home rules to comply with 33 V.S.A. § 7306 as amended by
16 this act.

17 **Sec. 6. EFFECTIVE DATE**

18 This act shall take effect on January 1, 2016.