

No. 121. An act relating to explanation of advance directives and treating clinicians who may sign a DNR/COLST.

(H.690)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 18 V.S.A. § 9701 is amended to read:

§ 9701. DEFINITIONS

As used in this chapter:

* * *

(21) “Ombudsman” means:

(A) an individual appointed as a long-term care ombudsman under the program contracted through the Department of Disabilities, Aging, and Independent Living pursuant to the Older Americans Act of 1965, as amended the State Long-Term Care Ombudsman or a representative of the Ombudsman’s Office, as defined in 33 V.S.A. § 7501; or

(B) a representative of the agency designated as the Office of the Mental Health Care Ombudsman pursuant to section 7259 of this title.

* * *

(34) “~~Patient~~ Mental health patient representative” means the mental health patient representative established by section 7253 of this title.

Sec. 2. 18 V.S.A. § 9703 is amended to read:

§ 9703. FORM AND EXECUTION

* * *

(b) The advance directive shall be dated, executed by the principal or by another individual in the principal's presence at the principal's express direction if the principal is physically unable to do so, and signed in the presence of two or more witnesses at least 18 years of age, who shall sign and affirm that the principal appeared to understand the nature of the document and to be free from duress or undue influence at the time the advance directive was signed. A health care provider may serve as a witness to the principal's execution of the advance directive under this subsection. If the principal is being admitted to or is a resident of a nursing home or residential care facility or is being admitted to or is a patient in a hospital at the time of execution, the individual who explained the nature and effect of the advance directive to the principal pursuant to subsection (d) or (e) of this section may also serve as one of the witnesses to the principal's execution of the advance directive under this subsection.

* * *

(d)(1) An advance directive shall not be effective if, at the time of execution, the principal is being admitted to or is a resident of a nursing home as defined in 33 V.S.A. § 7102 or a residential care facility, unless ~~an ombudsman, a patient representative, a recognized member of the clergy, an attorney licensed to practice in this State, or a Probate Division of the Superior Court designee~~ one of the following individuals explains the nature and effect of an advance directive to the principal and signs a statement affirming that he

or she has ~~explained the nature and effect of the advance directive to the principal~~ provided the explanation:

(A) an ombudsman;

(B) a recognized member of the clergy;

(C) an attorney licensed to practice in this State;

(D) a Probate Division of the Superior Court designee;

(E) an individual designated by a hospital pursuant to subsection 9709(d) of this title;

(F) a mental health patient representative;

(G) an individual who is volunteering at the nursing home or residential care facility without compensation and has received appropriate training regarding the explanation of advance directives; or

(H) a clinician, as long as the clinician is not employed by the nursing home or residential care facility at the time of the explanation.

(2) It is the intent of this subsection to ensure that residents of nursing homes and residential care facilities are willingly and voluntarily executing advance directives.

(e) An advance directive shall not be effective if, at the time of execution, the principal is being admitted to or is a patient in a hospital, unless ~~an ombudsman, a patient representative, a recognized member of the clergy, an attorney licensed to practice in this State, a Probate Division of the Superior Court designee, or an individual designated under subsection 9709(c) of this~~

~~title by the hospital~~ one of the following individuals has explained the nature and effect of an advance directive to the principal and signs a statement affirming that he or she has explained the nature and effect of the advance directive to the principal provided the explanation:

(1) an ombudsman;

(2) a recognized member of the clergy;

(3) an attorney licensed to practice in this State;

(4) a Probate Division of the Superior Court designee;

(5) an individual designated by the hospital pursuant to subsection

9709(d) of this title; or

(6) a mental health patient representative.

* * *

Sec. 2a. 18 V.S.A. § 9706(c) is amended to read:

(c) Upon a determination of need by the principal's clinician, or upon the request of the principal, agent, guardian, ombudsman, a mental health patient representative, health care provider, or any interested individual, the principal's clinician, another clinician, or a clinician's designee shall reexamine the principal to determine whether the principal has capacity. The clinician shall document the results of the reexamination in the principal's medical record and shall make reasonable efforts to notify the principal and the agent or guardian, as well as the individual who initiated the new

determination of capacity, of the results of the reexamination, if providing such notice is consistent with the requirements of HIPAA.

Sec. 2b. 18 V.S.A. § 9707(h) is amended to read:

(h)(1) An advance directive executed in accordance with section 9703 of this title may contain a provision permitting the agent, in the event that the principal lacks capacity, to authorize or withhold health care over the principal's objection. In order to be valid, the provision shall comply with the following requirements:

* * *

(D)(i) An ombudsman, a mental health patient representative, attorney licensed to practice law in this State, or the Probate Division of the Superior Court designee shall sign a statement affirming that he or she has explained the nature and effect of the provision to the principal, and that the principal appeared to understand the explanation and be free from duress or undue influence.

(ii) If the principal is a patient in a hospital when the provision is executed, the ombudsman, mental health patient representative, attorney, or Probate Division of the Superior Court designee shall be independent of the hospital and not an interested individual.

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Sec. 3. 18 V.S.A. § 9708 is amended to read:

§ 9708. AUTHORITY AND OBLIGATIONS OF HEALTH CARE

PROVIDERS, HEALTH CARE FACILITIES, AND RESIDENTIAL
CARE FACILITIES REGARDING DNR ORDERS AND COLST

(a) As used in this section, “clinician” shall have the same meaning as in section 9701 of this title and shall also include a duly licensed medical doctor, osteopathic physician, advanced practice registered nurse or nurse practitioner, or physician assistant who treated the patient outside Vermont and held a valid license to practice in the state in which the patient was located at the time the DNR/COLST was issued.

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Sec. 4. 18 V.S.A. § 9709(d) is amended to read:

(d)(1) Each nursing home and residential care facility that chooses to use volunteers to explain to residents the nature and effect of an advance directive as required by subsection 9703(d) of this title shall ensure that the volunteers have received appropriate training regarding the explanation of advance directives.

(2) Every hospital shall designate an adequate number of individuals to explain the nature and effect of an advance directive to patients as required by subsection 9703(e) of this title.

Sec. 4a. 18 V.S.A. § 9718(a) is amended to read:

(a) A petition may be filed in the Probate Division of the Superior Court under this section by:

(1) a principal, guardian, agent, ombudsman, a mental health patient representative, or interested individual other than one identified in an advance directive, pursuant to subdivision 9702(a)(10) of this title, as not authorized to bring an action under this section;

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Sec. 5. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: May 3, 2018