

**Testimony Senate Health & Welfare Committee**  
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Thank you for the opportunity to testify on H.690, *an act relating to the explanation of advance directives and treating clinicians who may sign a DNR/COLST order.*

H.690 is the result of recommendations made by the Palliative Care and Pain management Task Force in their 2018 annual report. The overarching goal of the bill is to promote patient autonomy and remove barriers to completing advance directives and DNR/COLST orders by amending the current advance directive statute to:

1. Expand the group of individuals authorized to serve as an explainer on an advance directive (18 V.S.A. § 9703);
2. Clarify who can serve as a witness on an advance directive (18 V.S.A. § 9703); and
3. Revise the language to allow for out-of-state licensed clinicians to complete DNR/COLST orders for their Vermont patients. (18 V.S.A § 9708)

Under the current statute, people who are being admitted to or already reside in a hospital, nursing home or residential care facility need to have an “explainer” sign the advance directive affirming that they have explained the nature and effect of the document to the principal. The group of individuals presently authorized to serve as the explainer are, in practice, so limited that it presents a barrier to completion of documents in these settings.

To resolve this issue, we support the proposed language in H.690 that would modify the existing group of individuals authorized to serve as an explainer (ombudsman, recognized member of the clergy, attorney licensed to practice in this State, Probate Division of the Superior Court designee, patient representative) by adding or clarifying the following:

- An ombudsman under the expanded definition of “The State Long-Term Care Ombudsman or a representative of the Ombudsman’s Office as defined in 33 V.S.A § 7501”;
- An individual designated by a hospital pursuant to subsection 9709 (d) of this title;
  - This would allow for a designated hospital explainer to go to a nursing home or residential care facility and act as the explainer in that setting.
- A mental health patient representative;
  - Addition of the words mental health serve as clarification for who these patient representatives are intended to serve.
- 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;
  - This would allow a nursing home or residential care facility to utilize trained volunteers to serve as explainers of advance directives.
- A clinician, as long as the clinician is not employed by the nursing home or residential care facility at the time of the explanation.
  - This would allow a physician, APRN, or PA who is independent of the facility and not in its employ, to serve as the explainer. These professionals are already permitted to serve as witnesses; they have, within their scope of practice, the

responsibility of informed consent, thus explaining information to a patient is already one of their obligations; they would not receive compensation from the facility thereby minimizing potential conflicts of interest; and, they have both a professional and ethical duty to the patient first and foremost.

In addition, the current statute is unclear as to whether the explainer on an advance directive can also serve as one of the two required witnesses. The language proposed in section 9707 (b) would clarify this as well as make it explicit that a health care provider is permitted to serve as a witness on an advance directive. We also support this clarifying language.

With regard to expanding the definition of clinician for the purpose of completing DNR/COLST orders: The current definition of clinician restricts clinicians who can complete these orders to only those who are licensed in Vermont. This is problematic for Vermont patients who receive their care at Dartmouth (or another out-of-state facility) from a clinician who is licensed in the state in which they practice and not dually licensed in Vermont. Strictly speaking, per Vermont law, these out-of-state clinicians are not permitted to sign DNR/COLST orders for their Vermont patients. The language proposed in H.690 would expand the definition of clinician to include a duly licensed medical doctor, osteopathic physician, advanced practice registered nurse or nurse practitioner, or a 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. (Section 9708). We support this expanded definition and believe it is consistent with obligations to promote patient self-determination as well as improve quality care—particularly for those with advanced or serious illness or at end of life.

Lastly, given that the proposed changes will necessitate updates to current forms, as well as revisions to existing educational resources, we would ask that the effective date of this bill be changed to July 1, 2018 to allow sufficient time for the revisions and reprinting of materials to take place.

Respectfully submitted,

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