

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Human Services to which was referred House Bill No.
3 469 entitled “An act relating to allowing remote witnesses and explainers for a
4 Ulysses clause in an advance directive” respectfully reports that it has
5 considered the same and recommends that the bill be amended by striking out
6 all after the enacting clause and inserting in lieu thereof the following:

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

8 § 9701. DEFINITIONS

9 As used in this chapter:

10 * * *

11 (35) “Remote witness” means a witness who is not physically present
12 when a principal signs an advance directive.

13 Sec. 2. 18 V.S.A. § 9703 is amended

14 § 9703. FORM AND EXECUTION

15 (a) An adult with capacity may execute an advance directive at any time.

16 (b)(1) The advance directive shall be dated, executed by the principal or by
17 another individual in the principal’s presence at the principal’s express
18 direction if the principal is physically unable to do so, and signed ~~in the~~
19 ~~presence of~~ by two or more witnesses at least 18 years of age, who shall sign
20 and affirm that the principal appeared to understand the nature of the document

1 and to be free from duress or undue influence at the time the advance directive
2 was signed.

3 (2) On and after April 1, 2024, the principal shall have either signed in
4 the physical presence of each witness or the following conditions shall have
5 been met with respect to each remote witness:

6 (A) the principal and the remote witness were known to each other;

7 (B) based on video or telephonic communication between the
8 principal and the remote witness, the remote witness attested that the principal
9 seemed to understand the nature of the document and to be free from duress or
10 undue influence at the time the advance directive was signed; and

11 (C) the principal included on the advance directive the name and
12 contact information for the remote witness and the nature of the principal's
13 relationship to the remote witness.

14 (3) A health care provider may serve as a witness to the principal's
15 execution of the advance directive under this subsection.

16 (4) If the principal is being admitted to or is a resident of a nursing home
17 or residential care facility or is being admitted to or is a patient in a hospital at
18 the time of execution, the individual who explained the nature and effect of the
19 advance directive to the principal pursuant to subsection (d) or (e) of this
20 section may also serve as one of the witnesses to the principal's execution of
21 the advance directive under this subsection.

1 (c) Neither the agent appointed by the principal nor the principal’s spouse,
2 parent, adult sibling, adult child, or adult grandchild may witness the advance
3 directive.

4 (d)(1) An advance directive shall not be effective if, at the time of
5 execution, the principal is being admitted to or is a resident of a nursing home
6 as defined in 33 V.S.A. § 7102 or a residential care facility, unless one of the
7 following individuals explains the nature and effect of an advance directive to
8 the principal and signs a statement affirming that ~~he or she~~ the individual has
9 provided the explanation:

10 (A) an ombudsman;

11 (B) a recognized member of the clergy;

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

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

14 (E) an individual designated by a hospital pursuant to subsection
15 9709(d) of this title;

16 (F) a mental health patient representative;

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

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

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

4 (3) The individual who explains the nature and effect of an advance
5 directive to the principal under this subsection may be physically present in the
6 same location as the principal at the time of the explanation or may deliver the
7 explanation to the principal by video or telephone.

8 (e)(1) An advance directive shall not be effective if, at the time of
9 execution, the principal is being admitted to or is a patient in a hospital, unless
10 one of the following individuals ~~has explained~~ explains the nature and effect of
11 an advance directive to the principal and signs a statement affirming that ~~he or~~
12 ~~she~~ the individual has provided the explanation:

13 ~~(1)~~(A) an ombudsman;

14 ~~(2)~~(B) a recognized member of the clergy;

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

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

17 ~~(5)~~(E) an individual designated by the hospital pursuant to subsection
18 9709(d) of this title; or

19 ~~(6)~~(F) a mental health patient representative.

20 (2) The individual who explains the nature and effect of an advance
21 directive to the principal under this subsection may be physically present in the

1 same location as the principal at the time of the explanation or may deliver the
2 explanation to the principal by video or telephone.

3 (f) A durable power of attorney for health care, terminal care document, or
4 advance directive executed prior to the enactment of this chapter shall be a
5 valid advance directive if the document complies with the statutory
6 requirements in effect at the time the document was executed or with the
7 provisions of this chapter.

8 (g) A principal, a witness, or an individual who explains an advance
9 directive under subsection (d) or (e) of this section may sign the advance
10 directive or the explanation affirmation statement using an electronic signature,
11 provided that the electronic signature complies with the Uniform Electronic
12 Transaction Act, 9 V.S.A. chapter 20.

13 Sec. 3. 18 V.S.A. § 9707(h) is amended to read:

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

19 (A) An agent shall be named in the provision.

1 (B) The agent shall accept in writing the responsibility of authorizing
2 or withholding health care over the principal’s objection in the event the
3 principal lacks capacity.

4 (C) A clinician for the principal shall sign the provision and affirm
5 that the principal appeared to understand the benefits, risks, and alternatives to
6 the health care being authorized or rejected by the principal in the provision.

7 (D)(i) An ombudsman, a mental health patient representative,
8 attorney licensed to practice law in this State, or the Probate Division of the
9 Superior Court designee shall sign a statement affirming that ~~he or she~~ the
10 individual has explained the nature and effect of the provision to the principal,
11 and that the principal appeared to understand the explanation and be free from
12 duress or undue influence. The individual may be physically present in the
13 same location as the principal at the time of the explanation or may deliver the
14 explanation to the principal by video or telephone.

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

19 (E) The provision shall specify the treatments to which it applies, and
20 shall include an explicit statement that the principal desires or does not desire
21 the proposed treatments even over the principal’s objection at the time

1 treatment is being offered or withheld. The provision may include a statement
2 expressly granting to the health care agent the authority to consent to the
3 principal's voluntary hospitalization.

4 (F) The provision shall include an acknowledgment that the principal
5 is knowingly and voluntarily waiving the right to refuse or receive treatment at
6 a time of incapacity, and that the principal understands that a clinician will
7 determine capacity.

8 (G) The principal, the agent, the clinician, and the individual who
9 explained the provision under subdivision (D) of this subdivision (h)(1), or any
10 one or more of them, may sign the provision, acceptance, or explanation
11 affirmation statement, as applicable, using an electronic signature, provided
12 that the electronic signature complies with the Uniform Electronic Transaction
13 Act, 9 V.S.A. chapter 20.

14 (2) A provision executed in compliance with subdivision (1) of this
15 subsection shall be effective when the principal's clinician and a second
16 clinician have determined pursuant to subdivision 9706(a)(1) of this title that
17 the principal lacks capacity.

18 (3) If an advance directive contains a provision executed in compliance
19 with this section:

1 (A) The agent may, in the event the principal lacks capacity, make
2 health care decisions over the principal’s objection, provided that the decisions
3 are made in compliance with subsection 9711(d) of this title.

4 (B) A clinician shall follow instructions of the agent authorizing or
5 withholding health care over the principal’s objection.

6 Sec. 4. 18 V.S.A. § 9721 is amended to read:

7 § 9721. REMOTE WITNESSES AND EXPLAINERS FOR A LIMITED
8 TIME

9 (a) ~~As used in this section, “remote witness” means a witness who is not~~
10 ~~physically present when a principal signs an advance directive. [Repealed.]~~

11 (b)(1) Notwithstanding any provision of subsection 9703(b) of this title to
12 the contrary, an advance directive executed by a principal between February
13 15, 2020 and June 15, 2020 shall be deemed to be valid even if the principal
14 signed the advance directive outside the physical presence of one or both of the
15 required witnesses, provided all of the following conditions were met with
16 respect to each remote witness:

17 (A) the principal and the remote witness were known to each other;

18 (B) the remote witness was informed about the role of a witness to
19 the execution of an advance directive; and

20 (C) the principal included on the advance directive the name and
21 contact information for the witness.

1 (2) An advance directive executed as set forth in subdivision (1) of this
2 subsection shall be valid until June 30, 2021 unless amended, revoked, or
3 suspended by the principal in accordance with this chapter prior to that date.

4 (c)(1) Notwithstanding any provision of subsection 9703(b) of this title to
5 the contrary, an advance directive executed by a principal between June 15,
6 2020 and March 31, 2024 shall be deemed to be valid even if the principal
7 signed the advance directive outside the physical presence of one or both of the
8 required witnesses, provided all of the following conditions are met with
9 respect to each remote witness:

10 (A) the principal and the remote witness were known to each other;

11 (B) based on video or telephonic communication between the
12 principal and the remote witness, the remote witness attested that the principal
13 seemed to understand the nature of the document and to be free from duress or
14 undue influence at the time the advance directive was signed; and

15 (C) the principal included on the advance directive the name and
16 contact information for the remote witness and the nature of the principal's
17 relationship to the remote witness.

18 (2) An advance directive executed as set forth in subdivision (1) of this
19 subsection shall remain valid unless amended, revoked, or suspended by the
20 principal in accordance with this chapter.

1 (d)(1) Notwithstanding any provision of subsection 9703(d) or (e) of this
2 title to the contrary, an advance directive executed by a principal between
3 February 15, 2020 and March 31, 2024 while the principal was being admitted
4 to or was a resident of a nursing home or residential care facility or was being
5 admitted to or was a patient in a hospital shall be deemed to be valid even if
6 the individual who explained the nature and effect of the advance directive to
7 the principal in accordance with subsection 9703(d) or (e) of this title, as
8 applicable, was not physically present in the same location as the principal at
9 the time of the explanation, provided the individual delivering the explanation
10 was communicating with the principal by video or telephone.

11 (2) An advance directive executed in accordance with this subsection
12 shall remain valid as set forth in subsection (b) or (c) of this section, as
13 applicable.

14 (e) On and after April 1, 2024, advance directives shall only be executed in
15 accordance with section 9703 of this chapter.

16 Sec. 5. EFFECTIVE DATE

17 This act shall take effect on April 1, 2024.

18 (Committee vote: _____)

19 _____

20 Representative _____

21 FOR THE COMMITTEE