

H.469, An act relating to remote and electronic processes for executing an advance directive
Section-by-section summary of bill as passed by the House
Prepared by Jennifer Carbee, Office of Legislative Counsel
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Sec. 1. 18 V.S.A. § 9701 – Definitions

- This section would add two new definitions to the advance directives chapter:
 - “Digital signature,” which is defined as an electronic identifier intended by the user to have the same force and effect as a manual signature and that includes several enumerated safeguards to ensure its security
 - “Remote witness,” which is defined as a witness who is not physically present when a principal signs an advance directive

Sec. 2. 18 V.S.A. § 9703 – Form and execution (of an advance directive)

- This section makes permanent the ability to have one or both witnesses to a principal’s signing of an advance directive be remote if certain conditions are met (this is already authorized through March 31, 2024, by the COVID flexibility legislation)
 - Can witness through live, interactive, audio-video connection or by telephone
- Also makes permanent the ability to have a remote explanation from the neutral individual who must explain the nature and effective of an advance directive to a principal who is in or is being admitted to a hospital or long-term care facility
 - Can explain through live, interactive, audio-video connection or by telephone
- This section allows principal, witness, and explainer to use digital signatures

Sec. 3. 18 V.S.A. § 9707(h) – “Ulysses clause”

- This section addresses “Ulysses clauses,” which are optional provisions authorized under existing law in which a principal can allow a specifically named agent, in the event that the principal lacks capacity, to authorize or withhold health care over the principal’s objection
 - Current law requires additional steps to execute a Ulysses clause, including:
 - The principal’s clinician must sign the provision and affirm that the principal appeared to understand the benefits, risks, and alternatives to the health care being authorized or rejected in the provision, and
 - A neutral individual must sign a statement affirming that they explained the nature and effect of the provision to the principal and the principal appeared to understand it and to be free from duress or undue influence
- The bill would require that the first time a principal executes a Ulysses clause provision, the clinician and the explainer each must be physically present in the same location as the principal for their assessment (clinician) and explanation (explainer)
 - But clinician and explainer do not need to be present at same time as each other
- The bill would specify that if the principal later executes a new advance directive containing a Ulysses clause, the clinician and the explainer do not need to be physically present in the same location as the principal and can provide their assessment (clinician) and explanation (explainer) through a live, interactive, audio-video connection (but not by telephone)
- The bill allows the principal, the agent, the clinician, and the explainer to use digital signatures

Sec. 4. 18 V.S.A. § 9721 – Remote witnesses and explainers

- This section sets an end date of March 31, 2024 for the remote witnessing provisions in current law that were enacted during the COVID pandemic and that address advance directives executed between February 15, 2020 and March 31, 2024
- The remote witnessing provisions in Sec. 2 will apply to all advance directives executed on and after April 1, 2024

Sec. 5. Effective date

- The act takes effect on April 1, 2024