

1 H.75

2 Introduced by Representative Cordes of Bristol

3 Referred to Committee on

4 Date:

5 Subject: Health; health care professionals; patient choice at end of life;

6 DNR/COLST orders

7 Statement of purpose of bill as introduced: This bill proposes to authorize
8 naturopathic physicians, nurse practitioners, and physician assistants to
9 participate in the process established in Vermont's patient choice at end-of-life
10 laws. It would also allow naturopathic physicians to sign and issue do-not-
11 resuscitate (DNR) orders and clinician orders for life-sustaining treatment
12 (COLST).

13 An act relating to clinician participation in patient choice at end of life and
14 DNR/COLST orders

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

16 Sec. 1. 18 V.S.A. chapter 113 is amended to read:

17 CHAPTER 113. PATIENT CHOICE AT END OF LIFE

18 § 5281. DEFINITIONS

19 As used in this chapter:

1 (1) “Bona fide ~~physician-patient~~ clinician-patient relationship” means a
2 treating or consulting relationship in the course of which a ~~physician~~ clinician
3 has completed a full assessment of the patient’s medical history and current
4 medical condition, including a personal physical examination.

5 (2) “Capable” means that a patient has the ability to make and
6 communicate health care decisions to a ~~physician~~ clinician, including
7 communication through persons familiar with the patient’s manner of
8 communicating if those persons are available.

9 (3) “Health care facility” ~~shall have~~ has the same meaning as in section
10 9432 of this title.

11 (4) “Health care provider” means a person, partnership, corporation,
12 facility, or institution licensed or certified or authorized by law to administer
13 health care or dispense medication in the ordinary course of business or
14 practice of a profession.

15 (5) “Impaired judgment” means that a person does not sufficiently
16 understand or appreciate the relevant facts necessary to make an informed
17 decision.

18 (6) “Interested person” means:

19 (A) the patient’s ~~physician~~ clinician;

20 (B) a person who knows that ~~he or she is a relative of the patient~~ is
21 related to that person by blood, civil marriage, civil union, or adoption;

1 (C) a person who knows that ~~he or she would be entitled,~~ upon the
2 patient's death, that person would be entitled to any portion of the estate or
3 assets of the patient under any will or trust, by operation of law, or by contract;
4 or

5 (D) an owner, operator, or employee of a health care facility, nursing
6 home, or residential care facility where the patient is receiving medical
7 treatment or is a resident.

8 (7) "Palliative care" ~~shall have~~ has the same definition as in section 2 of
9 this title.

10 (8) "Patient" means a person who is 18 years of age or older and under
11 the care of a ~~physician~~ clinician.

12 (9) ~~"Physician"~~ "Clinician" means an individual who is licensed;

13 (A) to practice medicine under 26 V.S.A. chapter 23 or 33;

14 (B) as an advanced practice registered nurse under 26 V.S.A. chapter
15 28 to practice as a certified nurse practitioner;

16 (C) as a physician assistant under 26 V.S.A. chapter 31; or

17 (D) as a naturopathic physician under 26 V.S.A. chapter 81.

18 (10) "Terminal condition" means an incurable and irreversible disease
19 ~~which~~ that would, within reasonable medical judgment, result in death within
20 six months.

1 (11) “Health care services” means services for the diagnosis, prevention,
2 treatment, cure, or relief of a health condition, illness, injury, or disease.

3 (12) “Telemedicine” means the delivery of health care services such as
4 diagnosis, consultation, or treatment through the use of live interactive audio
5 and video over a secure connection that complies with the requirements of the
6 Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-
7 191.

8 § 5282. RIGHT TO INFORMATION

9 The rights of a patient under section 1871 of this title to be informed of all
10 available options related to terminal care and under 12 V.S.A. § 1909(d) to
11 receive answers to any specific question about the foreseeable risks and
12 benefits of medication without the ~~physician’s~~ clinician withholding any
13 requested information exist regardless of the purpose of the inquiry or the
14 nature of the information. A ~~physician~~ clinician who engages in discussions
15 with a patient related to such risks and benefits in the circumstances described
16 in this chapter shall not be construed to be assisting in or contributing to a
17 patient’s independent decision to self-administer a lethal dose of medication,
18 and such discussions shall not be used to establish civil or criminal liability or
19 professional disciplinary action.

1 § 5283. REQUIREMENTS FOR PRESCRIPTION AND
2 DOCUMENTATION; IMMUNITY

3 (a) A ~~physician~~ clinician shall not be subject to any civil or criminal
4 liability or professional disciplinary action if the ~~physician~~ clinician prescribes
5 to a patient with a terminal condition medication to be self-administered for the
6 purpose of hastening the patient's death and the ~~physician~~ clinician affirms by
7 documenting in the patient's medical record that all of the following occurred:

8 (1) The patient made an oral request to the ~~physician~~ clinician in the
9 ~~physician's~~ clinician's physical presence or by telemedicine, if the ~~physician~~
10 clinician determines the use of telemedicine to be clinically appropriate, for
11 medication to be self-administered for the purpose of hastening the patient's
12 death.

13 (2) Not fewer than 15 days after the first oral request, the patient made a
14 second oral request to the ~~physician~~ clinician in the ~~physician's~~ clinician's
15 physical presence or by telemedicine, if the ~~physician~~ clinician determines the
16 use of telemedicine to be clinically appropriate, for medication to be self-
17 administered for the purpose of hastening the patient's death.

18 (3) At the time of the second oral request, the ~~physician~~ clinician offered
19 the patient an opportunity to rescind the request.

20 (4) The patient made a written request for medication to be self-
21 administered for the purpose of hastening the patient's death that was signed

1 by the patient in the presence of two or more witnesses who were not
2 interested persons, who were at least 18 years of age, and who signed and
3 affirmed that the patient appeared to understand the nature of the document
4 and to be free from duress or undue influence at the time the request was
5 signed.

6 (5) The ~~physician~~ clinician determined that the patient:

7 (A) was suffering a terminal condition, based on the ~~physician's~~
8 clinician's review of the patient's relevant medical records and a ~~physician's~~
9 clinician's physical examination of the patient;

10 (B) was capable;

11 (C) was making an informed decision; and

12 (D) had made a voluntary request for medication to hasten the
13 patient's own death.

14 (6) The ~~physician~~ clinician informed the patient in person or by
15 telemedicine, both verbally and in writing, of all the following:

16 (A) the patient's medical diagnosis;

17 (B) the patient's prognosis, including an acknowledgement that the
18 ~~physician's~~ clinician's prediction of the patient's life expectancy was an
19 estimate based on the ~~physician's~~ clinician's best medical judgment and was
20 not a guarantee of the actual time remaining in the patient's life, and that the
21 patient could live longer than the time predicted;

1 (C) the range of treatment options appropriate for the patient and the
2 patient's diagnosis;

3 (D) if the patient was not enrolled in hospice care, all feasible end-of-
4 life services, including palliative care, comfort care, hospice care, and pain
5 control;

6 (E) the range of possible results, including potential risks associated
7 with taking the medication to be prescribed; and

8 (F) the probable result of taking the medication to be prescribed.

9 (7) The ~~physician~~ clinician referred the patient to a second ~~physician~~
10 clinician for medical confirmation of the diagnosis, prognosis, and a
11 determination that the patient was capable, was acting voluntarily, and had
12 made an informed decision.

13 (8) The ~~physician~~ clinician either verified that the patient did not have
14 impaired judgment or referred the patient for an evaluation by a psychiatrist,
15 psychologist, or clinical social worker licensed in Vermont for confirmation
16 that the patient was capable and did not have impaired judgment.

17 (9) If applicable, the ~~physician~~ clinician consulted with the patient's
18 primary care ~~physician~~ clinician with the patient's consent.

19 (10) The ~~physician~~ clinician informed the patient that the patient may
20 rescind the request at any time and in any manner and offered the patient an
21 opportunity to rescind after the patient's second oral request.

1 (11) The ~~physician~~ clinician ensured that all required steps were carried
2 out in accordance with this section and confirmed, immediately prior to writing
3 the prescription for medication, that the patient was making an informed
4 decision.

5 (12) The ~~physician~~ clinician wrote the prescription after the last to occur
6 of the following events:

7 (A) the patient's written request for medication to hasten the patient's
8 own death;

9 (B) the patient's second oral request; and

10 (C) the ~~physician's~~ clinician's offering the patient an opportunity to
11 rescind the request.

12 (13) The ~~physician~~ clinician either:

13 (A) dispensed the medication directly, provided that at the time the
14 ~~physician~~ clinician dispensed the medication, the ~~physician~~ clinician was
15 licensed to dispense medication in Vermont, had a current Drug Enforcement
16 Administration certificate, and complied with any applicable administrative
17 rules; or

18 (B) with the patient's written consent:

19 (i) contacted a pharmacist and informed the pharmacist of the
20 prescription; and

1 (ii) delivered the written prescription personally or by mail or
2 facsimile to the pharmacist, who dispensed the medication to the patient, the
3 ~~physician~~ clinician, or an expressly identified agent of the patient.

4 (14) The ~~physician~~ clinician recorded and filed the following in the
5 patient's medical record:

6 (A) the date, time, and wording of all oral requests of the patient for
7 medication to hasten the patient's own death;

8 (B) all written requests by the patient for medication to hasten the
9 patient's own death;

10 (C) the ~~physician's~~ clinician's diagnosis, prognosis, and basis for the
11 determination that the patient was capable, was acting voluntarily, and had
12 made an informed decision;

13 (D) the second ~~physician's~~ clinician's diagnosis, prognosis, and
14 verification that the patient was capable, was acting voluntarily, and had made
15 an informed decision;

16 (E) the ~~physician's~~ clinician's attestation that the patient was enrolled
17 in hospice care at the time of the patient's oral and written requests for
18 medication to hasten the patient's own death or that the ~~physician~~ clinician
19 informed the patient of all feasible end-of-life services;

20 (F) the ~~physician's~~ clinician's verification that the patient either did
21 not have impaired judgment or that the ~~physician~~ clinician referred the patient

1 for an evaluation and the person conducting the evaluation has determined that
2 the patient did not have impaired judgment;

3 (G) a report of the outcome and determinations made during any
4 evaluation ~~which~~ that the patient may have received;

5 (H) the date, time, and wording of the ~~physician's~~ clinician's offer to
6 the patient to rescind the request for medication at the time of the patient's
7 second oral request; and

8 (I) a note by the ~~physician~~ clinician indicating that all requirements
9 under this section were satisfied and describing all of the steps taken to carry
10 out the request, including a notation of the medication prescribed.

11 (15) After writing the prescription, the ~~physician~~ clinician promptly
12 filed a report with the Department of Health documenting completion of all of
13 the requirements under this section.

14 (b) This section shall not be construed to limit civil or criminal liability for
15 gross negligence, recklessness, or intentional misconduct.

16 * * *

17 § 5285. LIMITATIONS ON ACTIONS

18 (a) A ~~physician~~ clinician, nurse, pharmacist, or other person shall not be
19 under any duty, by law or contract, to participate in the provision of a lethal
20 dose of medication to a patient.

1 (b) A health care facility or health care provider shall not subject a
2 ~~physician~~ clinician, nurse, pharmacist, or other person to discipline,
3 suspension, loss of license, loss of privileges, or other penalty for actions taken
4 in good faith reliance on the provisions of this chapter or refusals to act under
5 this chapter.

6 (c) No ~~physician~~ clinician, nurse, pharmacist, or other person licensed,
7 certified, or otherwise authorized by law to deliver health care services in this
8 State shall be subject to civil or criminal liability or professional disciplinary
9 action for acting in good faith compliance with the provisions of this chapter.

10 (d) Except as otherwise provided in this section and sections 5283, 5289,
11 and 5290 of this title, nothing in this chapter shall be construed to limit liability
12 for civil damages resulting from negligent conduct or intentional misconduct
13 by any person.

14 § 5286. HEALTH CARE FACILITY EXCEPTION

15 A health care facility may prohibit a ~~physician~~ clinician from writing a
16 prescription for a dose of medication intended to be lethal for a patient who is a
17 resident in its facility and intends to use the medication on the facility's
18 premises, provided the facility has notified the ~~physician~~ clinician in writing of
19 its policy with regard to the prescriptions. Notwithstanding subsection 5285(b)
20 of this title, any ~~physician~~ clinician who violates a policy established by a

1 health care facility under this section may be subject to sanctions otherwise
2 allowable under law or contract.

3 § 5287. INSURANCE POLICIES; PROHIBITIONS

4 (a) A person and ~~his or her~~ the person's beneficiaries shall not be denied
5 benefits under a life insurance policy, as defined in 8 V.S.A. § 3301, for
6 actions taken in accordance with this chapter.

7 (b) The sale, procurement, or issue of any ~~medical~~ professional malpractice
8 insurance policy or the rate charged for the policy shall not be conditioned
9 upon or affected by whether the ~~physician~~ clinician is willing or unwilling to
10 participate in the provisions of this chapter.

11 * * *

12 § 5292. STATUTORY CONSTRUCTION

13 Nothing in this chapter shall be construed to authorize a ~~physician~~ clinician
14 or any other person to end a patient's life by lethal injection, mercy killing, or
15 active euthanasia. Action taken in accordance with this chapter shall not be
16 construed for any purpose to constitute suicide, assisted suicide, mercy killing,
17 or homicide under the law. This section shall not be construed to conflict with
18 section 1553 of the Patient Protection and Affordable Care Act, Pub. L. No.
19 111-148, as amended by the Health Care and Education Reconciliation Act of
20 2010, Pub. L. No. 111-152.

21 * * *

1 Sec. 2. 18 V.S.A. § 9708 is amended to read:

2 § 9708. AUTHORITY AND OBLIGATIONS OF HEALTH CARE

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

5 (a) As used in this section, “clinician” ~~shall have~~ has the same meaning as
6 in section 9701 of this title and shall also include a naturopathic physician
7 licensed pursuant to 26 V.S.A. chapter 81 and to a duly licensed medical
8 doctor, osteopathic physician, advanced practice registered nurse or nurse
9 practitioner, naturopathic physician, or physician assistant who treated the
10 patient outside Vermont and held a valid license to practice in the state in
11 which the patient was located at the time the DNR/COLST was issued.

12 (b) A DNR order and a COLST shall be issued on the Department of
13 Health’s “Vermont DNR/COLST form” as designated by rule by the
14 Department of Health.

15 (c) Notwithstanding subsection (b) of this section, health care facilities and
16 residential care facilities may document DNR/COLST orders in the patient’s
17 medical record in a facility-specific manner when the patient is in their care.

18 (d) A DNR order must:

19 (1) be signed by the patient’s clinician;

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

4 (3) include either:

5 (A) the name of the patient; agent; guardian, in accordance with
6 14 V.S.A. § 3075(g); or surrogate giving informed consent for the DNR and
7 the individual's relationship to the patient; or

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

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

14 (e) A COLST must:

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

16 (2) include the name of the patient; agent; guardian, in accordance with
17 14 V.S.A. § 3075(g); or surrogate giving informed consent for the COLST and
18 the individual's relationship to the patient.

19 (f) [Repealed.]

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

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

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

5 (h) A clinician who issues a DNR order shall authorize issuance of a DNR
6 identification to the patient. Uniform minimum requirements for DNR
7 identification shall be determined by the Department of Health by rule not later
8 than January 1, 2016.

9 (i) Every health care provider, health care facility, and residential care
10 facility shall honor a DNR/COLST order or a DNR identification unless the
11 provider or facility:

12 (1) believes in good faith, after consultation with the agent or guardian
13 where possible and appropriate, that:

14 (A) the patient wishes to have the DNR/COLST order revoked; or

15 (B) the patient with the DNR identification is not the individual for
16 whom the DNR order was issued; and

17 (2) documents the basis for the good faith belief in the patient's medical
18 record.

19 (j) A DNR/COLST order executed prior to July 1, 2011 shall be a valid
20 order if the document complies with the statutory requirements in effect at the
21 time the document was executed or with the provisions of this chapter.

1 (k) A health care provider shall honor in good faith an out-of-state DNR
2 order, orders for life sustaining treatment, or out-of-state DNR identification if
3 there is no reason to believe that what has been presented is invalid.

4 (l) A DNR order precludes efforts to resuscitate only in the event of
5 cardiopulmonary arrest and does not affect other therapeutic interventions that
6 may be appropriate for the patient.

7 Sec. 3. EFFECTIVE DATE

8 This act shall take effect on July 1, 2025.