

April 13, 2010



UPDATE – Advance Directive Legislation (2010)

CLIENT ADVISORY

I. Senate Bill 275 (Passed with Revisions)

In January, HDJN published a Client Advisory titled “Advance Directives and Durable Do Not Resuscitate Orders – 2010 Proposed Amendments,” which summarized legislation (Senate Bill 275) revising the Virginia Health Care Decisions Act (Va. Code § 54.1-2982 et seq.). A copy of that Client Advisory can be found on the HDJN website.¹ During the Legislative session, however, the House made several changes to the language of the original Bill. These changes are summarized below:

- Patient Care Consulting Committee: The “Ethics Committee,” which is responsible for making certain decisions related to advance directives, has been renamed the “Patient Care Consulting Committee,” and will NOT be called the “health care decisions review committee” as originally proposed. The compositional requirements of this committee remain the same, but new language adds that “Four members of the patient care consulting committee shall constitute a quorum of the patient care consulting committee.”
- Substitute Decision Makers: One of the most notable provisions proposed in the original legislation added a close friend to the statutory list of substitute decision makers provided at Va. Code § 54.1-2986.

While the final legislation still permits a close friend to serve as a patient’s substitute decision maker, the language of this provision was significantly revised and qualified in the final legislation. Specifically, the new provision adds the following class of individuals to the lowest priority of possible substitute decision makers:

Except in cases in which the proposed treatment recommendation involves the withholding or withdrawing of a life-prolonging procedure, any adult, except any director, employee, or agent of a health care provider currently involved in the care of the patient, who (i) has exhibited special care and concern for the patient and (ii) is familiar with the patient’s religious beliefs and basic values and any preferences previously expressed by the patient regarding health care, to the extent that they are known.

The Patient Care Consulting Committee is responsible for determining whether an individual meets these qualifications. If a Patient Care Consulting Committee does not exist or a quorum of the Patient Care Consulting Committee cannot be established, two physicians who are not currently involved in the care of the patient may make this determination. The final legislation included the following additional qualification:

¹ <http://www.hdjn.com/health/pdfs/advisories/2010/ClientAdvisory-2010%20Proposed%20Amendments%20AD%20%20DDNR%20Orders1%2013%2010.pdf>



Hancock, Daniel, Johnson & Nagle, PC (HDJN) provides assistance and guidance to health care providers in virtually all legal matters affecting healthcare. Generally, these include corporate, employment, administrative, and transactional matters; litigation; and governmental affairs.

these physicians (i) may not be employed by the facility where the patient is receiving health care, and (ii) cannot practice medicine in the same professional business entity as the attending physician.

- Capacity Reviewers: The bill originally introduced would have added nurse practitioners and clinical nurse specialists to the list of clinicians authorized to serve as the second examiner for purposes of determining whether a patient is incapable of making an informed decision. The language that passed, however, deleted this addition, limiting these determinations to physicians and clinical psychologists.

Although the final legislation has been approved by the Senate and the House, it still awaits the Governor's approval. Once approved, the revised law will take effect July 1, 2010.

II. House Bill 267 (Passed)

Other legislation (House Bill 267) passed provides revised guidance regarding the Virginia Advance Health Care Directive Registry. This legislation eliminates the requirement that an advance directive or revocation of an advance directive be notarized before being submitted to the registry.² Additionally, this legislation requires the Commissioner of Health to work together with the Department for the Aging, Department of Health Professions, Bureau of Insurance, Virginia State Bar and other stakeholders to develop and implement a plan for informing the public about the availability of the Advance Health Care Directive Registry. Because this legislation contained an emergency clause, it went into effect immediately upon the Governor's approval on March 1, 2010.

III. Simplified Advance Directive Forms

The VHHA recently published a new set of simplified advance directive forms. Although Virginia law does not require a specific form for advance directives, the Virginia Health Care Decisions Act includes suggested language that complies with existing law. The VHHA has formatted this language into a formalized document for use by hospitals, health systems and the public. In addition to this form, the VHHA now offers a simplified, more "user-friendly" set of advance directive forms that also satisfy the requirements of state law. The new forms include the following:

- A basic advance directive form, designed to meet the needs of most individuals wishing to execute an advance directive.
- A supplement to the basic advance form that allows for additional treatment instructions by individuals with mental health conditions.
- A combined form that incorporates the basic form and the supplement described above in one comprehensive form.

The statutory form as well as the new simplified forms are available on VHHA's web site at: <http://www.vhha.com/index.cfm?fuseaction=Page.viewPage&pageID=530>, along with additional information on Virginia's health care decision-making laws.

² This provision, however, will not go into effect until the Advance Health Care Directive Registry is created.

Hancock, Daniel, Johnson & Nagle, P.C.

Page 3



HDJN is one of the largest Virginia law firms primarily focusing its practice on the needs of the healthcare industry.

If you have any questions regarding the new legislation or would like assistance in revising your advance directive policy to comply with the new laws, please contact Mary C. Malone or Michelle E. Calloway at (804) 967-9604 or by email mmalone@hdjn.com or mcalloway@hdjn.com. Additional information about Hancock, Daniel Johnson & Nagle, P.C. is available on the firm's website at www.hdjn.com.

For more information about HDJN visit the firm website at:
www.hdjn.com

Richmond 4701 Cox Road Suite 400 Glen Allen, VA 23060 PO Box 72050 Richmond, VA 23255-2050 ☎ (804) 967-9604	Fairfax 3975 Fair Ridge Road Suite 475 South Fairfax, VA 22033 ☎ (703) 591-3440
Harrisonburg 3210 Peoples Drive Harrisonburg, VA 22801 ☎ (866) 967-9604	Virginia Beach One Columbus Center 283 Constitution Drive Suite 301 Virginia Beach, VA 23462 ☎ (757) 321-6555
Lewisburg, WV 210 West Randolph Street Lewisburg, WV 24901 ☎ (866) 967-9604	Franklin, TN 725 Cool Springs Blvd. Suite 600 Franklin, TN 37067 ☎ (866) 967-9604