

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM 2015



Bill Number: S.62 Name of Bill: Surrogate decision making for DNR/COLST

Agency/Dept: VDH / DAIL Author of Bill Review: D.Philibert; D. Englander; H. Chen M.D. /
**Suzanne Leavitt, RN MS Assistant Director Division of Licensing and Protection 5/24/16 added additional comments.*

Date of Bill Review: May 5, 2016 Related Bills and Key Players VDH, VEN and DAIL

Status of Bill: (check one): ☐ Upon Introduction ☐ As passed by 1st body ☒ As passed by both

Recommended Position:

☒ Support ☐ Oppose ☐ Remain Neutral ☐ Support with modifications

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

S.62 establishes a process for obtaining consent for a DNR or COLST for individuals lacking capacity and without an advance directive or a guardian. No hearing was held on the bill as introduced. The bill, as passed by the Senate evolved as a result of multiple stakeholders working together and with leg council. The bill as passed in its final form differs only from the Senate-passed version by a change in the effective date from 2016 to 2018

Is there a need for this bill? *Please explain why or why not.*

Yes there is. This bill addresses issues that have been unresolved and discussed by stakeholders for 4 years, under the leadership of VDH. Issues of who can be a surrogate for informed consent to DNR/COLST, immunity for surrogates and surrogate access to medical and other records remain unresolved and are best addressed in statute. The VDH was originally tasked with resolving these issues in rule, but many conversations with stakeholders resulted in a recognition that these issues could not be addressed in rule. This bill is the culmination of stakeholder work.

2. What are likely to be the fiscal and programmatic implications of this bill for this Department?

This bill will clarify a process that occurs in a clinical setting. Surrogate consent in this bill applies only to consent for DNR and COLST. The only programmatic implication for VDH and DAIL will be required rulemaking. For VDH, it will eliminate the task of addressing surrogate consent in rule, and the need to determine the criteria for DNR/COLST ID by rule will remain. VDH is in the process of writing the DNR Identification Rule, which is likely to be adopted by the end of July, 2016. DAIL will be required to amend its nursing home rules. **DAIL is prepared to amend the Licensing and Operating Rules for Nursing Homes to incorporate the language of this bill by January 1, 2018 as required.*

3. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

This bill amends language in Vermont's nursing home statute (33 V.S.A. §7306) to allow for a different process for surrogate consent for DNR/COLST for nursing home residents than currently exists. This amendment will make the surrogate consent process consistent for all Vermonters regardless of residential

setting. This amendment will require DAIL to amend its nursing home rules to comply with the statute as amended.

- 4. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it?** *(for example, public, municipalities, organizations, business, regulated entities, etc)*
This bill will facilitate clinical decision-making and ensure that patient's wishes are protected as much as can be determined through the use of a substituted judgment standard, the highest standard for surrogate decision making. Stakeholders have included Vermont Legal Aid representatives and clinical ethicists.

5. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? All of the following stakeholders recognize that the lack of a clear legal process for determining informed consent for people who lack capacity and have no agent or guardian is problematic in the clinical setting. Wider use of Advance Directives will avoid the need for surrogates, but many people have not completed advanced care planning. The stakeholders are: The Vermont Ethics Network, Legal Aid, Clinical Ethicists, the Medical Society, the Hospital Association, The Vermont Health Care Association (nursing homes and residential care homes) and the Vermont Visiting Nurses Association have all been involved in the development of this draft of S.62. Although each stakeholder group may offer minor changes, these stakeholders are all supportive of the direction of this approach to surrogate decision-making.

6.2 Who else is likely to oppose the proposal and why? We are not aware of any potential opponents.

- 6. Rationale for recommendation:** *Justify recommendation stated above.*
This policy is needed in order to provide a legal process for appointing surrogates to make medical decisions for people without capacity who lack an agent or guardian. **DAIL supports this bill.*
- 7. Specific modifications that would be needed to recommend support of this bill:** *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*
N/A, the bill has been passed by both the House and the Senate.
- 8. Gubernatorial appointments to board or commission?** None

Secretary/Commissioner has reviewed this document: _____ **Date:** _____