
Virginia Office of Emergency Medical Services
Durable Do Not Resuscitate Program
Related Code of Virginia as of August 2011

Virginia Department of Health
Office of Emergency Medical Services
1041 Technology Park Drive
Glen Allen, Virginia 23059
(804)888-9100
www.vdh.virginia.gov/oems

Code of Virginia

The Durable Do Not Resuscitate program can be found in several sections of the *COV* beginning with § 54.1-2981 which is titled the "Health Care Decisions Act" and includes DDNR and Advanced Directives. The following are the current sections of Code as of this writing:

- [§ 54.1-2981](#) Title – Health Care Decisions Act.
- [§ 54.1-2982](#) Definitions.
- [§ 54.1-2987.1](#) Durable Do Not Resuscitate Orders.
- [§ 54.1-2988](#) Immunity from Liability; Burden of Proof; Presumption.
- [§ 54.1-2989](#) Willful Destruction, Concealment, etc., of Declaration or Revocation; Penalties.
- [§ 54.1-2990](#) Medically Unnecessary Treatment Not Required.
- [§ 54.1-2991](#) Effect of Declaration; Suicide; Insurance; Declarations Executed Prior to Effective Date.
- [§ 54.1-2992](#) Preservation of Existing Rights.
- [§ 54.1-2993](#) Reciprocity.

§ 54.1-2981

Short Title

The provisions of this article shall be known and may be cited as the "Health Care Decisions Act."

(1983, c. 532, § 54-325.8:1; 1988, c. 765; 1992, cc. 748, 772.)

§ 54.1-2982

§ 54.1-2982.
Definitions.

As used in this article:

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § [54.1-2983](#) or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § [54.1-2983](#).

"Agent" means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § [54.1-2983](#), to make health care decisions for him. The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ [32.1-289.2](#) et seq.) of Chapter 8 of Title 32.1.

"Attending physician" means the primary physician who has responsibility for the health care of the patient.

"Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.

"Declarant" means an adult who makes an advance directive, as defined in this article, while capable of making and communicating an informed decision.

"Durable Do Not Resuscitate Order" means a written physician's order issued pursuant to § [54.1-2987.1](#) to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as an advance directive.

"Health care" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability, including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital, nursing home, assisted living facility, or other health care facility; psychiatric or other mental health treatment; and life-prolonging procedures and palliative care.

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, mental retardation, or any other mental or physical disorder that precludes communication or impairs judgment, to make an informed decision about providing, continuing, withholding or withdrawing a specific health care treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed health care decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

"Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition. However, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of pain relieving medications in excess of recommended dosages in accordance with §§ [54.1-2971.01](#) and [54.1-3408.1](#). For purposes of §§ [54.1-2988](#), [54.1-2989](#), and [54.1-2991](#), the term also shall include cardiopulmonary resuscitation.

"Patient care consulting committee" means a committee duly organized by a facility licensed to provide health care under Title 32.1 or Title 37.2, or a hospital or nursing home as defined in § [32.1-123](#) owned or operated by an agency of the Commonwealth that is exempt from licensure pursuant to § [32.1-124](#), to consult on health care issues only as authorized in this article. Each patient care consulting committee shall consist of five individuals, including at least one physician, one person licensed or holding a multistate licensure privilege under Chapter 30 (§ [54.1-3000](#) et seq.) to practice professional nursing, and one individual responsible for the provision of social services to patients of the facility. At least one committee member shall have experience in clinical ethics and at least two committee members shall have no employment or contractual relationship with

the facility or any involvement in the management, operations, or governance of the facility, other than serving on the patient care consulting committee. A patient care consulting committee may be organized as a subcommittee of a standing ethics or other committee established by the facility or may be a separate and distinct committee. Four members of the patient care consulting committee shall constitute a quorum of the patient care consulting committee.

"Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.

"Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the health care is to be rendered or withheld.

"Terminal condition" means a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is in a persistent vegetative state.

"Witness" means any person over the age of 18, including a spouse or blood relative of the declarant. Employees of health care facilities and physician's offices, who act in good faith, shall be permitted to serve as witnesses for purposes of this article.

(1983, c. 532, § 54-325.8:2; 1984, c. 79; 1988, c. 765; 1991, c. 583; 1992, cc. 412, 748, 772; 1994, c. [956](#); 1997, c. [609](#); 1998, cc. [630](#), [803](#), [854](#); 1999, c. [814](#); 2000, c. [1034](#); 2005, c. [186](#); 2007, cc. [92](#), [907](#); 2009, cc. [211](#), [268](#); 2010, c. [792](#).)

§ 54.1-2987.1

Durable Do Not Resuscitate Orders

A. A Durable Do Not Resuscitate Order may be issued by a physician for his patient with whom he has a bona fide physician/patient relationship as defined in the guidelines of the Board of Medicine, and only with the consent of the patient or, if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the person authorized to consent on the patient's behalf.

B. If a patient is able to, and does, express to a health care provider or practitioner the desire to be resuscitated in the event of cardiac or respiratory arrest, such expression shall revoke the provider's or practitioner's authority to follow a Durable Do Not Resuscitate Order. In no case shall any person other than the patient have authority to revoke a Durable Do Not Resuscitate Order executed upon the request of and with the consent of the patient himself.

If the patient is a minor or is otherwise incapable of making an informed decision and the Durable Do Not Resuscitate Order was issued upon the request of and with the consent of the person authorized to consent on the patient's behalf, then the expression by said authorized person to a health care provider or practitioner of

the desire that the patient be resuscitated shall so revoke the provider's or practitioner's authority to follow a Durable Do Not Resuscitate Order.

When a Durable Do Not Resuscitate Order has been revoked as provided in this section, a new Order may be issued upon consent of the patient or the person authorized to consent on the patient's behalf.

C. Durable Do Not Resuscitate Orders issued in accordance with this section shall remain valid and in effect until revoked as provided in subsection B or until rescinded, in accordance with accepted medical practice, by the provider who issued the Durable Do Not Resuscitate Order. In accordance with this section and regulations promulgated by the Board of Health, (i) qualified emergency medical services personnel as defined in § [32.1-111.1](#); (ii) licensed health care practitioners in any facility, program or organization operated or licensed by the Board of Health, the Department of Social Services, or the Department of Behavioral Health and Developmental Services or operated, licensed or owned by another state agency; and (iii) licensed health care practitioners at any continuing care retirement community registered with the State Corporation Commission pursuant to Chapter 49 (§ [38.2-4900](#) et seq.) of Title 38.2 are authorized to follow Durable Do Not Resuscitate Orders that are available to them in a form approved by the Board of Health.

D. The provisions of this section shall not authorize any qualified emergency medical services personnel or licensed health care provider or practitioner who is attending the patient at the time of cardiac or respiratory arrest to provide, continue, withhold or withdraw health care if such provider or practitioner knows that taking such action is protested by the patient incapable of making an informed decision. No person shall authorize providing, continuing, withholding or withdrawing health care pursuant to this section that such person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic values of a patient incapable of making an informed decision or the wishes of such patient fairly expressed when the patient was capable of making an informed decision. Further, this section shall not authorize the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.

E. For the purposes of this section:

"Health care provider" includes, but is not limited to, qualified emergency medical services personnel.

"Person authorized to consent on the patient's behalf" means any person authorized by law to consent on behalf of the patient incapable of making an informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian or as otherwise provided by law.

F. This section shall not prevent, prohibit or limit a physician from issuing a written order, other than a Durable Do Not Resuscitate Order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practice.

G. Valid Do Not Resuscitate Orders or Emergency Medical Services Do Not Resuscitate Orders issued before July 1, 1999, pursuant to the then-current law, shall remain valid and shall be given effect as provided in this article.

(1992, c. 412; 1994, c. [956](#); 1998, cc. [564](#), [628](#), [630](#), [803](#), [854](#); 1999, c. [814](#); 2009, cc. [211](#), [268](#), [549](#), [813](#), [840](#); 2010, c. [792](#).)

§ 54.1-2988

Immunity from liability; burden of proof; presumption.

A health care facility, physician or other person acting under the direction of a physician shall not be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of issuing a Durable Do Not Resuscitate Order or the providing, continuing, withholding or the withdrawal of health care under authorization or consent obtained in accordance with this article or as the result of the provision, withholding or withdrawal of ongoing health care in accordance with § [54.1-2990](#). No person or facility providing, continuing, withholding or withdrawing health care or physician issuing a Durable Do Not Resuscitate Order under authorization or consent obtained pursuant to this article or otherwise in accordance with § [54.1-2990](#) shall incur liability arising out of a claim to the extent the claim is based on lack of authorization or consent for such action.

Any agent or person identified in § [54.1-2986](#) who authorizes or consents to the providing, continuing, withholding or withdrawal of health care in accordance with this article shall not be subject, solely on the basis of that authorization or consent, to (i) criminal prosecution or civil liability for such action or (ii) liability for the cost of health care.

No individual serving on a facility's patient care consulting committee as defined in this article and no physician rendering a determination or affirmation in cases in which no patient care consulting committee exists shall be subject to criminal prosecution or civil liability for any act or omission done or made in good faith in the performance of such functions.

The provisions of this section shall apply unless it is shown by a preponderance of the evidence that the person authorizing or effectuating the providing, continuing, withholding or withdrawal of health care, or issuing, consenting to, making or following a Durable Do Not Resuscitate Order in accordance with § [54.1-2987.1](#) did not, in good faith, comply with the provisions of this article.

The distribution to patients of written advance directives in a form meeting the requirements of § [54.1-2984](#) and assistance to patients in the completion and execution of such forms by health care providers shall not constitute the unauthorized practice of law pursuant to Chapter 39 (§ [54.1-3900](#) et seq.).

An advance directive or Durable Do Not Resuscitate Order made, consented to or issued in accordance with this article shall be presumed to have been made, consented to, or issued voluntarily and in good faith by an adult who is capable of making an informed decision, physician or person authorized to consent on the patient's behalf.

(1983, c. 532, § 54-325.8:8; 1988, c. 765; 1992, cc. 412, 748, 772; 1998, cc. [803](#), [854](#); 1999, c. [814](#); 2000, cc. [590](#), [598](#); 2009, cc. [211](#), [268](#); 2010, c. [792](#).)

§ 54.1-2989

Willful destruction, concealment, etc., of declaration or revocation; penalties.

A. Any person who willfully (i) conceals, cancels, defaces, obliterates, or damages the advance directive or Durable Do Not Resuscitate Order of another without the declarant's or patient's consent or the consent of the person authorized to consent for the patient; (ii) falsifies or forges the advance directive or Durable Do Not Resuscitate Order of another; or (iii) falsifies or forges a revocation of the advance directive or Durable Do Not Resuscitate Order of another shall be guilty of a Class 1 misdemeanor. If such action causes life-prolonging procedures to be utilized in contravention of the previously expressed intent of the patient or a Durable Do Not Resuscitate Order, the person committing such action shall be guilty of a Class 6 felony.

B. Any person who willfully (i) conceals, cancels, defaces, obliterates, or damages the advance directive or Durable Do Not Resuscitate Order of another without the declarant's or patient's consent or the consent of the person authorized to consent for the patient, (ii) falsifies or forges the advance directive or Durable Do Not Resuscitate Order of another, (iii) falsifies or forges a revocation of the advance directive or Durable Do Not Resuscitate Order of another, or (iv) conceals or withholds personal knowledge of the revocation of an advance directive or Durable Do Not Resuscitate Order, with the intent to cause a withholding or withdrawal of life-prolonging procedures, contrary to the wishes of the declarant or a patient, and thereby, because of such act, directly causes life-prolonging procedures to be withheld or withdrawn and death to be hastened, shall be guilty of a Class 2 felony.

(1983, c. 532, § 54-325.8:9; 1988, c. 765; 1992, cc. 412, 748, 772; 1998, cc. [803](#), [854](#); 1999, c. [814](#); 2009, cc. [211](#), [268](#).)

§ 54.1-2990

Medically unnecessary health care not required; procedure when physician refuses to comply with an advance directive or a designated person's health care decision; mercy killing or euthanasia prohibited.

A. Nothing in this article shall be construed to require a physician to prescribe or render health care to a patient that the physician determines to be medically or ethically inappropriate. However, in such a case, if the physician's determination is contrary to the request of the patient, the terms of a patient's advance directive, the decision of an agent or person authorized to make decisions pursuant to § [54.1-2986](#), or a Durable Do Not Resuscitate Order, the physician shall make a reasonable effort to inform the patient or the patient's agent or person with decision-making authority pursuant to § [54.1-2986](#) of such determination and the reasons for the determination. If the conflict remains unresolved, the physician shall make a reasonable effort to transfer the patient to another physician who is willing to comply with the request of the patient, the terms of the advance directive, the decision of an agent or person authorized to make decisions pursuant to § [54.1-2986](#), or a Durable Do Not Resuscitate Order. The physician shall provide the patient or his agent or person with decision-making authority pursuant to § [54.1-2986](#) a reasonable time of not less than fourteen days to effect such transfer. During this period, the physician shall continue to provide any life-sustaining care to the patient which is reasonably available to such physician, as requested by the patient or his agent or person with decision-making authority pursuant to § [54.1-2986](#).

B. For purposes of this section, "life-sustaining care" means any ongoing health care that utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, including hydration, nutrition, maintenance medication, and cardiopulmonary resuscitation.

C. Nothing in this section shall require the provision of health care that the physician is physically or legally unable to provide, or health care that the physician is physically or legally unable to provide without thereby denying the same health care to another patient.

D. Nothing in this article shall be construed to condone, authorize or approve mercy killing or euthanasia, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

(1983, c. 532, § 54-325.8:10; 1988, c. 765; 1992, cc. 748, 772; 1999, c. [814](#); 2000, cc. [590](#), [598](#); 2009, cc. [211](#), [268](#).)

§ 54.1-2991

Effect of declaration; suicide; insurance; declarations executed prior to effective date.

The withholding or withdrawal of life-prolonging procedures in accordance with the provisions of this article shall not, for any purpose, constitute a suicide. Nor shall the making of an advance directive pursuant to this article affect the sale, procurement or issuance of any policy of life insurance, nor shall the making of an advance directive or the issuance of a Durable Do Not Resuscitate Order pursuant to this article be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated by the withholding or withdrawal of life-prolonging procedures from an insured patient in accordance with this article, notwithstanding any term of the policy to the contrary. A person shall not be required to make an advance directive or consent to a Durable Do Not Resuscitate order as a condition for being insured for, or receiving, health care services.

The declaration of any patient made prior to July 1, 1983, an advance directive made prior to July 1, 1992, or the issuance, in accordance with the then current law, of a Do Not Resuscitate Order or an Emergency Medical Services Do Not Resuscitate Order prior to July 1, 1999, shall be given effect as provided in this article.

(1983, c. 532, § 54-325.8:11; 1988, c. 765; 1992, cc. 412, 748, 772; 1999, c. [814](#); 2009, cc. [211](#), [268](#).)

§ 54.1-2992

Preservation of existing rights.

The provisions of this article are cumulative with existing law and shall not be construed to modify an individual's right to consent or refuse to consent to medical treatment if he is capable of making an informed decision, or to alter or limit the authority that otherwise exists under the common law, statutes or regulations of the Commonwealth (i) of a health care provider to provide health care; or (ii) of a person's agent, guardian or other legally authorized representative to make decisions on behalf of a person who is incapable of making

an informed decision. The provisions of this article shall not impair any existing rights or responsibilities which a health care provider, a patient, including a minor or incapacitated patient, or a patient's family may have in regard to the providing, continuing, withholding or withdrawal of life-prolonging medical procedures under the common law or statutes of the Commonwealth; however, this section shall not be construed to authorize violations of § [54.1-2990](#).

(1983, c. 532, § 54-325.8:12; 1988, c. 765; 1992, cc. 748, 772; 1997, c. [801](#); 2000, cc. [590](#), [598](#); 2009, cc. [211](#), [268](#).)

§ [54.1-2993](#) (does not apply to DDNR)

This section and only this section is given when the section of Code DOES NOT APPLY TO DDNR orders. The Code of Virginia does not provide reciprocity for out of state DDNR orders. As written below reciprocity is only given for advanced directives and DDNR orders are distinct from advanced directives.

Reciprocity.

An advance directive executed in another state shall be deemed to be validly executed for the purposes of this article if executed in compliance with the laws of the Commonwealth of Virginia or the laws of the state where executed. Such advance directives shall be construed in accordance with the laws of the Commonwealth of Virginia.

(1992, cc. 748, 772.)