



ACT 60 DNR/COLST Order Surrogate Consent Workgroup

Meeting Notes: Wednesday, September 18, 2013

108 Cherry Street Burlington, VT

Participants

Present: Sally Bliss, FAHC; Cindy Bruzzese, VEN; Sam Able-Palmer, Legal Aid; Bessie Weiss, VDH; Dawn Philibert, VDH; Present by Phone: Jacob Speidel, Legal Aid; Jill Olson, VAHHS; Madeleine Mongan, VMS; Jen Carbee, Leg. Council; Sylvia Davis, VAHHA.

Review of Work to Date

Bessie Weiss provided an update on the work of the committee to date. A discussion ensued and the following history of committee and others' efforts related to surrogate consent was recounted:

- Act 60 (2011) required VDH to adopt rules to: designate a uniform DNR/COLST form; establish criteria for surrogate consent to DNR/COLST; designate uniform minimum requirements for DNR identification. Rules were to be adopted by 3/1/12.
- The Study Committee on Informed Consent for a DNR or COLST, required by Act 60, was convened. The group began work on the issues and provided input to VDH for the rulemaking required by Act 60.
- Rulemaking planning uncovered two issues that could not be addressed by rule: 1) immunity for surrogates and 2) surrogate access to principal's medical records
- The Committee submitted its required report in November, 2011. The report reiterated the need for a statutory fix to the issues of immunity and access to medical records.
- In response to the Report, the Legislature passed Act 76 in 2012, an act which delayed the required date for the adoption of the rules to March 1, 2013.
- VDH again pursued rulemaking, acknowledging that the rule could not address the two unresolved issues. The rule was held in abeyance in hopes that 2013 Legislature would address the issues in legislation.
- The January, 2013 VEN Annual Report of the Palliative Care and Pain Management Task Force reiterated the need for a legislative resolution to the issues of immunity and access to medical records for surrogates.
- Simultaneously, VDH continued to work with its Study Committee to draft statutory language that would address the issues. This language was provided to legislative Counsel member Jen Carbee, who translated it into a draft bill.
- Reps. Haas and Frank sponsored H.237, *Palliative Care and Pain Management*, in short form only to keep the conversation about these issues on the table. The stated purpose of the bill was: *To implement the recommendations in the 2013 Report of the Palliative Care and Pain Management Task Force.*

- Members of the House Human Services Committee were reluctant to take up the bill because of concerns about it confounding discussions related to S.77 (Act 39) *Patient Choice and Control at End of Life*.
- The 2013 Appropriations Bill extended the deadline for VDH rulemaking July 2014. VDH has withdrawn the rule while the Study Committee considers next steps.

Discussion of Issues for Future Work

In view of the work that has been done so far, the group raised the following issues:

- No one has a clear sense of what appetite there may be by key legislative committees to pursue a statutory fix to the issues of surrogacy. Cindy hopes to get a sense of this over the next several months.
- In order to make the 7/1/14 deadline for adopting a rule, VDH will probably need to file the rule before we know if the legislative committees will take up these legislative issues.
- There is always the possibility of having the rule adoption date changed again.
- There is a need to have a rule about the standard for DNR I.D. as soon as possible. The current, withdrawn, rule couples the issue of I.D. with the issues of surrogate immunity and access to medical records. They could be decoupled. The group would like to seek input from Chris Bell regarding EMT's opinions about the I.D. standards.
- Ultimately, group members felt that they all needed to get up to speed on the bill language that they developed last year as well as the language that was in the rule.
- Sally Bliss reported that in the bioethics world, the issue of surrogate consent is a "hot topic".

Agreed Upon Actions:

1. Dawn will send out the drafted bill language and the rule.
2. Chris Bell will be invited to next meeting to discuss I.D. standards and protocols
3. Committee will meet again to chart a course for possible legislation and the rule
4. Next meeting is scheduled for **Wednesday, October 16, at 9:00 at VDH.**