



COMMONWEALTH of VIRGINIA

DEPARTMENT OF
MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

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April 27, 2002

Dear Medical and Dental Colleagues:

I want to take this opportunity to inform you about Senate Bill 483, which was recently passed by the General Assembly and signed into law by Governor Warner. This measure is important because it provides additional access to care for certain consumers of mental health, mental retardation and substance abuse services who live in the community, but who have no one available to consent to medical or dental care.

The statute provides that, when a delay in treatment might adversely affect a person's recovery, a licensed health professional or licensed hospital shall not be subject to liability arising out of a claim based on lack of informed consent or be prohibited from providing surgical, medical or dental treatment. The statute applies to patients or residents of state operated facilities and to consumers who are receiving case management services from a community service board or behavioral health authority, who are incapable of giving informed consent for treatment due to mental illness or mental retardation, but who have no family, guardian or legally authorized representative to consent to the treatment. The statute stipulates the conditions under which this treatment may be provided.

The changes to § 54.1-2970 become effective on July 1, 2002. I encourage you to acquaint yourself with this statute so that persons with mental illness or mental retardation who have no one to consent to their treatment may have access to this important medical and dental treatment. With your help consumers will have improved health care. I have enclosed a copy of Act. Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "James Reinhard".

James S. Reinhard, M.D.

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 80

An Act to amend and reenact § 54.1-2970 of the Code of Virginia, relating to medical treatment for persons incapable of giving informed consent.

[S 483]

Approved March 4, 2002

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-2970 of the Code of Virginia is amended and reenacted as follows:

§ 54.1-2970. Medical treatment for certain persons incapable of giving informed consent.

When a delay in treatment might adversely affect recovery, a licensed health professional or licensed hospital shall not be subject to liability arising out of a claim based on lack of informed consent or be prohibited from providing surgical ~~or~~, medical *or dental* treatment to an individual who is a patient or resident of a hospital or facility operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services *or to a consumer who is receiving case management services from a community services board or behavioral health authority* and who is incapable of giving informed consent to the treatment by reason of mental illness or mental retardation under the following conditions:

1. No legally authorized guardian or committee was available to give consent;
2. A reasonable effort is made to advise a parent or other next of kin of the need for the surgical ~~or~~, medical *or dental* treatment;
3. No reasonable objection is raised by *or on behalf of* the alleged incapacitated person; and
4. Two physicians, *or in the case of dental treatment, two dentists or one dentist and one physician*, state in writing that they have made a good faith effort to explain the necessary treatment to the individual, and they have probable cause to believe that the individual is incapacitated and unable to consent to the treatment by reason of mental illness or mental retardation and that delay in treatment might adversely affect recovery.

The provisions of this section shall apply only to the treatment of physical injury or illness and not to any treatment for mental, emotional or psychological condition.

Treatment *pursuant to this section* of an individual's mental, emotional or psychological condition when the ~~resident individual~~ *individual* is unable to make an informed decision and when no legally authorized guardian or committee is available to provide consent shall be governed by regulations promulgated by the State Mental Health, Mental Retardation and Substance Abuse Services Board under § 37.1-84.1 of this Code.