

# GRANITE STATE HOME HEALTH & HOSPICE ASSOCIATION

## **Testimony in Support of SB 74, relative to advance directives for health care decisions January 28, 2021**

Good afternoon, Mr. Chairman and members of the Committee. I'm Gina Balkus, CEO of the Granite State Home Health & Hospice Association. We advocate on issues that affect home care, hospice and palliative care providers and the patients they serve. Our Association members care for individuals from birth through end of life, primarily in patients' homes. We are part of the Healthcare Decisions Coalition that carefully considered the NH's existing advance directive statute and worked together to draft improvements. The Association supports Senate Bill 74.

Medicine has changed much during the past 30+ years since NH enacted advance directive laws. What has not changed is the respect for individual's right to choose medical treatment they want and decline medical treatment they do not want. Assuring that an individual's wishes are honored at end of life – when the person may be unable to articulate their wishes – is the core of the legislation that the late Senator Susan McLane championed in the late 80s and early 90s, and it remains the core of SB 74 introduced today.

NH's current law is clunky and often difficult to understand. SB 74 improves NH's advance directives law by clarifying definitions and simplifying much of the "legalese" in the existing form. It will also make it easier for health care providers to honor patient wishes without having to seek legal counsel or judicial orders. And it will allow for smoother handoffs between providers, allowing medical orders to follow the patient across the continuum of care.

One major improvement is on page 14 of the bill. The Disclosure Statement which must accompany the Durable Power of Attorney Document has been revised from lengthy legal jargon to concise, simple language. It covers all the same points that an individual should know prior to signing a DPOA.

Another improvement relates to surrogacy. In the existing law, there is confusion as to whether the surrogate has the same authority as an appointed agent. Some legal counsels have advised that a surrogate – such as a wife, husband, or adult child – may not be able to consent to withholding or withdrawal of life-sustaining treatment because NH's existing law only allows an agent to do that with express written permission in an advance directive. The "catch-22" is this. A person becomes a surrogate because there is no written advance directive. SB 74 eliminates the requirement that an individual expressly permit in writing the withholding or withdrawal life-sustaining treatment. This has been a cause of great confusion for agents, providers and especially for family members who are surrogate decision-makers. It has also been problematic when providers encounter an out-of-state advance directive that do not have this requirement.



Lastly, recognizing DNR orders and POLSTs and their counterparts from other states means that practitioner orders for life-sustaining treatment can accompany a patient in whatever setting they may be – a hospital, a nursing home, or at home with a home care or hospice provider. This is so important to honoring an individual's wishes across the continuum of care regarding the treatments they desire or decline. This has become vital during COVID 19, when many people are choosing to receive care in the community rather than in hospitals or nursing homes.

On behalf of NH's home care, hospice and palliative care providers and the patients they serve, I ask that you recommend SB 74 as ought to pass.