

Michael K. McKell proposes the following substitute bill:

Health Care Decisions Act Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: Jordan D. Teuscher

LONG TITLE

General Description:

This bill enacts the Uniform Health Care Decisions Act.

Highlighted Provisions:

This bill:

- defines terms;
- enacts the Uniform Health Care Decisions Act;
- enacts provisions related to advance health care directives including mental health care directives;
- creates an optional form;
- enacts provisions related to allowing a health care provider to be a surrogate for health care decision making in limited circumstances;
- enacts provisions related to liability and immunity regarding health care decision making;
- repeals provisions related to advance-health care directives not contained in the Uniform Health Care Decisions Act;
- renumbers sections pertaining to orders for life sustaining treatment; and
- makes conforming and technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

ENACTS:

75A-9-101, Utah Code Annotated 1953

75A-9-102, Utah Code Annotated 1953

75A-9-103, Utah Code Annotated 1953

29 **75A-9-104**, Utah Code Annotated 1953
30 **75A-9-105**, Utah Code Annotated 1953
31 **75A-9-106**, Utah Code Annotated 1953
32 **75A-9-107**, Utah Code Annotated 1953
33 **75A-9-108**, Utah Code Annotated 1953
34 **75A-9-109**, Utah Code Annotated 1953
35 **75A-9-110**, Utah Code Annotated 1953
36 **75A-9-111**, Utah Code Annotated 1953
37 **75A-9-112**, Utah Code Annotated 1953
38 **75A-9-113**, Utah Code Annotated 1953
39 **75A-9-114**, Utah Code Annotated 1953
40 **75A-9-115**, Utah Code Annotated 1953
41 **75A-9-116**, Utah Code Annotated 1953
42 **75A-9-117**, Utah Code Annotated 1953
43 **75A-9-118**, Utah Code Annotated 1953
44 **75A-9-119**, Utah Code Annotated 1953
45 **75A-9-120**, Utah Code Annotated 1953
46 **75A-9-121**, Utah Code Annotated 1953
47 **75A-9-122**, Utah Code Annotated 1953
48 **75A-9-123**, Utah Code Annotated 1953
49 **75A-9-124**, Utah Code Annotated 1953
50 **75A-9-125**, Utah Code Annotated 1953
51 **75A-9-126**, Utah Code Annotated 1953
52 **75A-9-127**, Utah Code Annotated 1953
53 **75A-9-128**, Utah Code Annotated 1953
54 **75A-9-129**, Utah Code Annotated 1953

55 RENUMBERS AND AMENDS:

56 **26B-2-801**, (Renumbered from 75A-3-101, as renumbered and amended by Laws of
57 Utah 2024, Chapter 364)
58 **26B-2-802**, (Renumbered from 75A-3-106)

59 REPEALS:

60 **75A-3-102**, as renumbered and amended by Laws of Utah 2024, Chapter 364
61 **75A-3-103**, as renumbered and amended by Laws of Utah 2024, Chapter 364
62 **75A-3-104**, as renumbered and amended by Laws of Utah 2024, Chapter 364

75A-3-105, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-107, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-201, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-202, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-203, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-204, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-205, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-206, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-207, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-208, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-301, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-302, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-303, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-304, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-305, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-306, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-307, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-308, as renumbered and amended by Laws of Utah 2024, Chapter 364
 75A-3-309, as renumbered and amended by Laws of Utah 2024, Chapter 364

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26B-2-801**, which is renumbered from Section 75A-3-101 is renumbered and amended to read:

Part 8. Order for Life Sustaining Treatment

~~[75A-3-101]~~ 26B-2-801 . Definitions.

As used in this chapter:

(1) "Adult" means an individual who is:

- (a) at least 18 years old; or
- (b) an emancipated minor.

~~[(2) "Advance health care directive":]~~

~~[(a) includes:]~~

~~[(i) a designation of an agent to make health care decisions for an adult when the adult cannot make or communicate health care decisions; or]~~

~~[(ii) an expression of preferences about health care decisions;]~~

97 ~~[(b) may take one of the following forms:]~~

98 ~~[(i) a written document, voluntarily executed by an adult in accordance with the~~
99 ~~requirements of this chapter; or]~~

100 ~~[(ii) a witnessed oral statement, made in accordance with the requirements of this~~
101 ~~chapter; and]~~

102 ~~[(e) does not include an order for life sustaining treatment.]~~

103 ~~[(3) "Agent" means an adult designated in an advance health care directive to make health~~
104 ~~care decisions for the declarant.]~~

105 ~~[(4)]~~ (2) "APRN" means an individual who is:

106 (a) certified or licensed as an advance practice registered nurse under Subsection
107 58-31b-301(2)(e);

108 (b) an independent practitioner; and

109 (c) acting within the scope of practice for that individual, as provided by law, rule, and
110 specialized certification and training in that individual's area of practice.

111 ~~(3)~~ "Capacity" means the same as that term is defined in Section 75A-9-101.

112 ~~[(5) "Best interest" means that the benefits to the individual resulting from a treatment~~
113 ~~outweigh the burdens to the individual resulting from the treatment, taking into account:]~~

114 ~~[(a) the effect of the treatment on the physical, emotional, and cognitive functions of the~~
115 ~~individual;]~~

116 ~~[(b) the degree of physical pain or discomfort caused to the individual by the treatment~~
117 ~~or the withholding or withdrawal of treatment;]~~

118 ~~[(e) the degree to which the individual's medical condition, the treatment, or the~~
119 ~~withholding or withdrawal of treatment, result in a severe and continuing impairment~~
120 ~~of the dignity of the individual by subjecting the individual to humiliation and~~
121 ~~dependency;]~~

122 ~~[(d) the effect of the treatment on the life expectancy of the individual;]~~

123 ~~[(e) the prognosis of the individual for recovery with and without the treatment;]~~

124 ~~[(f) the risks, side effects, and benefits of the treatment, or the withholding or~~
125 ~~withdrawal of treatment; and]~~

126 ~~[(g) the religious beliefs and basic values of the individual receiving treatment, to the~~
127 ~~extent these may assist the decision maker in determining the best interest.]~~

128 ~~[(6) "Capacity to appoint an agent" means that the adult understands the consequences of~~
129 ~~appointing a particular individual as agent.]~~

130 ~~[(7) "Child" means the same as that term is defined in Section 75-1-201.]~~

131 ~~[(8) "Declarant" means an adult who has completed and signed or directed the signing of an~~
132 ~~advance health care directive.]~~

133 ~~[(9) "Default surrogate" means the adult who may make decisions for an individual when~~
134 ~~either:]~~

135 ~~[(a) an agent or guardian has not been appointed; or]~~
136 ~~[(b) an agent is not able, available, or willing to make decisions for an adult.]~~

137 ~~[(10)] (4) "Emergency medical services provider" means a person that is licensed,~~
138 ~~designated, or certified under Title 53, Chapter 2d, Emergency Medical Services Act.~~

139 ~~[(11) "Estate" means the same as that term is defined in Section 75-1-201.]~~

140 ~~[(12) "Generally accepted health care standards":]~~

141 ~~[(a) is defined only for the purpose of:]~~

142 ~~[(i) this chapter and does not define the standard of care for any other purpose under~~
143 ~~Utah law; and]~~

144 ~~[(ii) enabling health care providers to interpret the statutory form set forth in Section~~
145 ~~75A-3-303; and]~~

146 ~~[(b) means the standard of care that justifies a provider in declining to provide life~~
147 ~~sustaining care because the proposed life sustaining care:]~~

148 ~~[(i) will not prevent or reduce the deterioration in the health or functional status of an~~
149 ~~individual;]~~

150 ~~[(ii) will not prevent the impending death of an individual; or]~~

151 ~~[(iii) will impose more burden on the individual than any expected benefit to the~~
152 ~~individual.]~~

153 ~~[(13)] (5) "Guardian" means the same as that term is defined in Section 75-1-201.~~

154 ~~[(14)] (6) "Health care" means [any care, treatment, service, or procedure to improve,~~
155 ~~maintain, diagnose, or otherwise affect an individual's physical or mental condition] the~~
156 ~~same as that term is defined in Section 75A-9-101.~~

157 ~~[(15) "Health care decision":]~~

158 ~~[(a) means a decision about an adult's health care made by, or on behalf of, an adult, that~~
159 ~~is communicated to a health care provider;]~~

160 ~~[(b) includes:]~~

161 ~~[(i) selection and discharge of a health care provider and a health care facility;]~~
162 ~~[(ii) approval or disapproval of diagnostic tests, procedures, programs of medication,~~
163 ~~and orders not to resuscitate; and]~~

164 ~~[(iii) directions to provide, withhold, or withdraw artificial nutrition and hydration~~

165 and all other forms of health care; and]

166 [(e) does not include decisions about an adult's financial affairs or social interactions

167 other than as indirectly affected by the health care decision.]

168 [(16) "Health care decision making capacity" means an adult's ability to make an informed

169 decision about receiving or refusing health care, including:]

170 [(a) the ability to understand the nature, extent, or probable consequences of health

171 status and health care alternatives;]

172 [(b) the ability to make a rational evaluation of the burdens, risks, benefits, and

173 alternatives of accepting or rejecting health care; and]

174 [(c) the ability to communicate a decision.]

175 [(17) "Health care facility" means:]

176 [(a) a health care facility as defined in Title 26B, Chapter 2, Part 2, Health Care Facility

177 Licensing and Inspection; and]

178 [(b) private offices of physicians, dentists, and other health care providers licensed to

179 provide health care under Title 58, Occupations and Professions.]

180 [(18)] (7) "Health care provider" means the same as that term is defined in Section

181 78B-3-403, except that "health care provider" does not include an emergency medical

182 services provider.

183 [(19) "Incapacitated" means the same as that term is defined in Section 75-1-201.]

184 [(20) "Incapacity" means the same as that term is defined in Section 75-1-201.]

185 [(21)] (8)(a) "Life sustaining care" means any medical intervention, including

186 procedures, administration of medication, or use of a medical device, that maintains

187 life by sustaining, restoring, or supplanting a vital function.

188 (b) "Life sustaining care" does not include care provided for the purpose of keeping an

189 individual comfortable.

190 [(22)] (9) "Minor" means an individual who:

191 (a) is under 18 years old; and

192 (b) is not an emancipated minor.

193 [(23)] (10) "Order for life sustaining treatment" means an order related to life sustaining

194 treatment, on a form designated by the Department of Health and Human Services under

195 Section [75-3-106] 26B-2-802, that gives direction to health care providers, health care

196 facilities, and emergency medical services providers regarding the specific health care

197 decisions of the individual to whom the order relates.

198 [(24)] (11) "Parent" means the same as that term is defined in Section 75-1-201.

199 ~~[(25) "Personal representative" means the same as that term is defined in Section 75-1-201.]~~

200 ~~[(26)] (12)~~ "Physician" means a physician and surgeon or osteopathic surgeon licensed
 201 under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic
 202 Medical Practice Act.

203 ~~[(27)] (13)~~ "Physician assistant" means an individual licensed as a physician assistant under
 204 Title 58, Chapter 70a, Utah Physician Assistant Act.

205 ~~[(28) "Reasonably available" means:]~~

206 ~~[(a) readily able to be contacted without undue effort; and]~~

207 ~~[(b) willing and able to act in a timely manner considering the urgency of the~~
 208 ~~circumstances.]~~

209 ~~[(29) "State" means the same as that term is defined in Section 75-1-201.]~~

210 ~~[(30)] (14)~~ "Substituted judgment" means the standard to be applied by a surrogate when
 211 making a health care decision for an adult who previously had the capacity to make
 212 health care decisions, which requires the surrogate to consider:

213 (a) specific preferences expressed by the adult:

214 (i) when the adult had the capacity to make health care decisions; and

215 (ii) at the time the decision is being made;

216 (b) the surrogate's understanding of the adult's health care preferences;

217 (c) the surrogate's understanding of what the adult would have wanted under the
 218 circumstances; and

219 (d) to the extent that the preferences described in Subsections ~~[(30)(a)] (14)(a)~~ through
 220 (c) are unknown, the best interest of the adult.

221 ~~[(31)] (15)~~ "Surrogate" means ~~[a health care decision maker who is:]~~ the same as that term is
 222 defined in Section 75A-9-101.

223 ~~[(a) an appointed agent;]~~

224 ~~[(b) a default surrogate under the provisions of Section 75A-3-203; or]~~

225 ~~[(c) a guardian].~~

226 ~~[(32) "Trust" means the same as that term is defined in Section 75-1-201.]~~

227 ~~[(33) "Will" means the same as that term is defined in Section 75-1-201.]~~

228 Section 2. Section **26B-2-802**, which is renumbered from Section 75A-3-106 is renumbered
 229 and amended to read:

230 **[75A-3-106] 26B-2-802 . Order for life sustaining treatment.**

231 (1) An order for life sustaining treatment may be created by or on behalf of an individual as
 232 described in this section.

- (2) An order for life sustaining treatment shall, in consultation with the individual authorized to consent to the order pursuant to this section, be prepared by:
- (a) the physician, APRN, or physician assistant of the individual to whom the order for life sustaining treatment relates; or
 - (b) a health care provider who:
 - (i) is acting under the supervision of an individual described in Subsection (2)(a); and
 - (ii) is:
 - (A) a nurse, licensed under Title 58, Chapter 31b, Nurse Practice Act;
 - (B) a physician assistant, licensed under Title 58, Chapter 70a, Utah Physician Assistant Act;
 - (C) a mental health professional, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act; or
 - (D) another health care provider, designated by rule as described in Subsection (10).
- (3) An order for life sustaining treatment shall be signed:
- (a) personally, by the physician, APRN, or physician assistant of the individual to whom the order for life sustaining treatment relates; and
 - (b)(i) if the individual to whom the order for life sustaining treatment relates is an adult with ~~[health-care-decision-making]~~capacity, by:
 - (A) the individual; or
 - (B) an adult who is directed by the individual to sign the order for life sustaining treatment on behalf of the individual;
 - (ii) if the individual to whom the order for life sustaining treatment relates is an adult who lacks ~~[health-care-decision-making]~~capacity, by:
 - (A) the surrogate with the highest priority under Section ~~[75A-3-206]~~ 75A-9-111;
 - (B) the majority of the class of surrogates with the highest priority under Section ~~[75A-3-206]~~ 75A-9-111; or
 - (C) an individual directed to sign the order for life sustaining treatment by, and on behalf of, the individuals described in Subsection (3)(b)(ii)(A) or (B); or
 - (iii) if the individual to whom the order for life sustaining treatment relates is a minor, by a parent or guardian of the minor.
- (4) If an order for life sustaining treatment relates to a minor and directs that life sustaining treatment be withheld or withdrawn from the minor, the order shall include a certification by two physicians that, in their clinical judgment, an order to withhold or

withdraw life sustaining treatment is in the best interest of the minor.

(5) An order for life sustaining treatment:

(a) shall be in writing, on a form designated by the Department of Health and Human Services;

(b) shall state the date on which the order for life sustaining treatment was made;

(c) may specify the level of life sustaining care to be provided to the individual to whom the order relates; and

(d) may direct that life sustaining care be withheld or withdrawn from the individual to whom the order relates.

(6) A health care provider or emergency medical service provider, licensed or certified under Title 53, Chapter 2d, Emergency Medical Services Act, is immune from civil or criminal liability, and is not subject to discipline for unprofessional conduct, for:

(a) complying with an order for life sustaining treatment in good faith; or

(b) providing life sustaining treatment to an individual when an order for life sustaining treatment directs that the life sustaining treatment be withheld or withdrawn.

(7) To the extent that the provisions of an order for life sustaining treatment described in this section conflict with the provisions of an advance health care directive made under Section ~~[75A-3-301]~~ 75A-9-906, the provisions of the order for life sustaining treatment take precedence.

(8) An adult, or a parent or guardian of a minor, may revoke an order for life sustaining treatment by:

(a) orally informing emergency service personnel;

(b) writing "void" across the order for life sustaining treatment form;

(c) burning, tearing, or otherwise destroying or defacing:

(i) the order for life sustaining treatment form; or

(ii) a bracelet or other evidence of the order for life sustaining treatment;

(d) asking another adult to take the action described in this Subsection (8) on the individual's behalf;

(e) signing or directing another adult to sign a written revocation on the individual's behalf;

(f) stating, in the presence of an adult witness, that the individual wishes to revoke the order; or

(g) completing a new order for life sustaining treatment.

(9)(a) Except as provided in Subsection (9)(c), a surrogate for an adult who lacks [health

301 ~~care decision making~~ capacity may only revoke an order for life sustaining treatment
302 if the revocation is consistent with the substituted judgment standard.

303 (b) Except as provided in Subsection (9)(c), a surrogate who has authority under this
304 section to sign an order for life sustaining treatment may revoke an order for life
305 sustaining treatment, in accordance with Subsection (9)(a), by:

306 (i) signing a written revocation of the order for life sustaining treatment; or

307 (ii) completing and signing a new order for life sustaining treatment.

308 (c) A surrogate may not revoke an order for life sustaining treatment during the period
309 of time beginning when an emergency service provider is contacted for assistance,
310 and ending when the emergency ends.

311 (10)(a) The Department of Health and Human Services shall make rules, in accordance
312 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

313 (i) create the forms and systems described in this section; and

314 (ii) develop uniform instructions for the form established in Section ~~[75A-3-303]~~

315 75A-9-110.

316 (b) The Department of Health and Human Services may make rules, in accordance with
317 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to designate health care
318 professionals, in addition to those described in Subsection (2)(b)(ii), who may
319 prepare an order for life sustaining treatment.

320 (c) The Department of Health and Human Services may assist others with training of
321 health care professionals regarding this chapter.

322 (11)(a) Notwithstanding any other provision of this section:

323 (i) the provisions of Title 46, Chapter 4, Uniform Electronic Transactions Act, apply
324 to any signature required on the order for life sustaining treatment; and

325 (ii) a verbal confirmation satisfies the requirement for a signature from an individual
326 under Subsection (3)(b)(ii) or (iii), if:

327 (A) requiring the individual described in Subsection (3)(b)(i)(B), (ii), or (iii) to
328 sign the order for life sustaining treatment in person or electronically would
329 require significant difficulty or expense; and

330 (B) a licensed health care provider witnesses the verbal confirmation and signs the
331 order for life sustaining treatment attesting that the health care provider
332 witnessed the verbal confirmation.

333 (b) The health care provider described in Subsection (11)(a)(ii)(B):

334 (i) may not be the same individual who signs the order for life sustaining treatment

under Subsection (3)(a); and

(ii) shall verify, in accordance with HIPAA as defined in Section 26B-3-126, the identity of the individual who is providing the verbal confirmation.

Section 3. Section **75A-9-101** is enacted to read:

CHAPTER 9. UNIFORM HEALTH CARE DECISIONS ACT

75A-9-101 . Definitions.

As used in this chapter:

(1)(a) "Advance health care directive" means a power of attorney for health care, health care instruction, or both.

(b) "Advance health care directive" includes an advance mental health care directive.

(2) "Advance mental health care" directive means a power of attorney for health care, health care instruction, or both, created under Section 75A-9-108.

(3)(a) "Agent" means an individual appointed under a power of attorney for health care to make a health care decision for the individual who made the appointment.

(b) "Agent" includes a co-agent or alternate agent appointed under Section 75A-9-119.

(4) "Capacity" means having capacity under Section 75A-9-102.

(5) "Cohabitant" means each of two individuals who have been living together as a couple for at least one year after each became an adult or was emancipated and who are not married to each other.

(6) "Default surrogate" means an individual authorized under Section 75A-9-111 to make a health care decision for another individual.

(7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) "Emergency medical services provider" means a person that is licensed, designated, or certified under Title 53, Chapter 2d, Emergency Medical Services Act.

(9) "Family member" means a spouse, adult child, parent, or grandparent, or an adult descendant of a spouse, child, parent, or grandparent.

(10)(a) "Guardian" means a person appointed under other law by a court to make decisions regarding the personal affairs of an individual, which may include health care decisions.

(b) "Guardian" does not include a guardian ad litem.

(11)(a) "Health care" means care or treatment or a service or procedure to maintain, monitor, diagnose, or otherwise affect an individual's physical or mental illness, injury, or condition.

(b) "Health care" includes mental health care.

(12) "Health care decision" means a decision made by an individual or the individual's surrogate regarding the individual's health care, including:

(a) selection or discharge of a health care professional or health care institution;

(b) approval or disapproval of a diagnostic test, surgical procedure, medication, therapeutic intervention, or other health care; and

(c) direction to provide, withhold, or withdraw artificial nutrition or hydration, mechanical ventilation, or other health care.

(13) "Health care institution" means a facility or agency licensed, certified, or otherwise authorized or permitted by other law to provide health care in this state in the ordinary course of business.

(14)(a) "Health care instruction" means a direction, whether or not in a record, made by an individual that indicates the individual's goals, preferences, or wishes concerning the provision, withholding, or withdrawal of health care.

(b) "Health care instruction" includes a direction intended to be effective if a specified condition arises.

(15) "Health care professional" means a physician or other individual licensed, certified, or otherwise authorized or permitted by other law of this state to provide health care in this state in the ordinary course of business or the practice of the physician's or individual's profession.

(16) "Individual" means an adult or emancipated minor.

(17) "Mental health care" means care or treatment or a service or procedure to maintain, monitor, diagnose, or otherwise affect an individual's mental illness or other psychiatric, psychological, or psychosocial condition.

(18) "Nursing home" means a nursing facility as defined in Section 1919(a)(1) of the Social Security Act, 42 U.S.C. Sec. 1396r(a)(1), as amended or skilled nursing facility as defined in Section 1819(a)(1) of the Social Security Act, 42 U.S.C. Sec. 1395i3(a)(1), as amended.

(19) "Person" means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(20) "Person interested in the welfare of the individual" means:

(a) the individual's surrogate;

(b) a family member of the individual;

(c) the cohabitant of the individual;

(d) a public entity providing health care case management or protective services to the individual;

(e) a person appointed under other law to make decisions for the individual under a power of attorney for finances; or

(f) a person that has an ongoing personal or professional relationship with the individual, including a person that has provided educational or health care services or supported decision making to the individual.

(21) "Physician" means an individual licensed to practice as a physician or osteopath under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(22) "Power of attorney for health care" means a record in which an individual appoints an agent to make health care decisions for the individual.

(23) "Reasonably available" means being able to be contacted without undue effort and being willing and able to act in a timely manner considering the urgency of an individual's health care situation. When used to refer to an agent or default surrogate, the term includes being willing and able to comply with the duties under Section 75A-9-116 in a timely manner considering the urgency of an individual's health care situation.

(24) "Record" means information:

(a) inscribed on a tangible medium; or

(b) stored in an electronic or other medium and retrievable in perceivable form.

(25) "Responsible health care professional" means:

(a) a health care professional designated by an individual or the individual's surrogate to have primary responsibility for the individual's health care or for overseeing a course of treatment; or

(b) in the absence of a designation under Subsection (25)(a) or, if the professional designated under Subsection (25)(a) is not reasonably available, a health care professional who has primary responsibility for overseeing the individual's health care or for overseeing a course of treatment.

(26) "Sign" means, with present intent to authenticate or adopt a record:

(a) execute or adopt a tangible symbol; or

(b) attach to or logically associate with the record an electronic symbol, sound, or process.

(27) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, any other territory or possession subject to the jurisdiction

of the United States, or a federally recognized Indian tribe.

(28) "Supported decision making" means assistance, from one or more persons of an individual's choosing, that helps the individual make or communicate a decision, including by helping the individual understand the nature and consequences of the decision.

(29) "Surrogate" means:

(a) an agent;

(b) a default surrogate; or

(c) a guardian authorized to make health care decisions.

Section 4. Section **75A-9-102** is enacted to read:

75A-9-102 . Capacity.

(1) An individual has capacity for the purpose of this chapter if the individual:

(a) is willing and able to communicate a decision independently or with appropriate services, technological assistance, supported decision making, or other reasonable accommodation; and

(b) in making or revoking:

(i) a health care decision, understands the nature and consequences of the decision, including the primary risks and benefits of the decision;

(ii) a health care instruction, understands the nature and consequences of the instruction, including the primary risks and benefits of the choices expressed in the instruction; and

(iii) an appointment of an agent under a health care power of attorney or identification of a default surrogate under Section 75A-9-111, recognizes the identity of the individual being appointed or identified and understands the general nature of the relationship of the individual making the appointment or identification with the individual being appointed or identified.

(2) The right of an individual who has capacity to make a decision about the individual's health care is not affected by whether the individual creates or revokes an advance health care directive.

Section 5. Section **75A-9-103** is enacted to read:

75A-9-103 . Presumption of capacity -- Overcoming presumption.

(1) An individual is presumed to have capacity to make or revoke a health care decision, health care instruction, and power of attorney for health care unless:

(a) a court has found the individual lacks capacity to do so; or

471 (b) the presumption is rebutted under Subsection (2).

472 (2) Subject to Sections 75A-9-104 and 75A-9-105, a presumption under Subsection (1) may
473 be rebutted by a finding that the individual lacks capacity:

474 (a) subject to Subsection (3), made on the basis of a contemporaneous examination by
475 any of the following:

476 (i) a physician;

477 (ii) a psychologist licensed or otherwise authorized to practice in this state;

478 (iii) an individual with training and expertise in the finding of lack of capacity who is
479 licensed or otherwise authorized to practice in this state as:

480 (A) a physician assistant; or

481 (B) an advanced practice registered nurse; or

482 (iv) a responsible health care professional not described in Subsections (2)(a)(i)
483 through (iii) if:

484 (A) the individual about whom the finding is to be made is experiencing a health
485 condition requiring a decision regarding health care treatment to be made
486 promptly to avoid loss of life or serious harm to the health of the individual;
487 and

488 (B) an individual described in Subsections (2)(a)(i) through (iii) is not reasonably
489 available;

490 (b) made in accordance with accepted standards of the profession and the scope of
491 practice of the individual making the finding and to a reasonable degree of certainty;
492 and

493 (c) documented in a record signed by the individual making the finding that includes an
494 opinion of the cause, nature, extent, and probable duration of the lack of capacity.

495 (3) The finding under Subsection (2) may not be made by:

496 (a) a family member of the individual presumed to have capacity;

497 (b) the cohabitant of the individual or a descendant of the cohabitant; or

498 (c) the individual's surrogate, a family member of the surrogate, or a descendant of the
499 surrogate.

500 (4) If the finding under Subsection (2) was based on a condition the individual no longer
501 has or a responsible health care professional subsequently has good cause to believe the
502 individual has capacity, the individual is presumed to have capacity unless a court finds
503 the individual lacks capacity or the presumption is rebutted under Subsection (2).

504 Section 6. Section **75A-9-104** is enacted to read:

75A-9-104 . Notice of finding of lack of capacity -- Right to object.

- (1) As soon as reasonably feasible, an individual who makes a finding under Subsection 75A-9-103(2) shall inform the individual about whom the finding was made or the individual's responsible health care professional of the finding.
- (2) As soon as reasonably feasible, a responsible health care professional who is informed of a finding under Subsection 75A-9-103(2) shall inform the individual about whom the finding was made and the individual's surrogate.
- (3) An individual found under Subsection 75A-9-103(2) to lack capacity may object to the finding:
- (a) by orally informing a responsible health care professional;
 - (b) in a record provided to a responsible health care professional or the health care institution in which the individual resides or is receiving care; or
 - (c) by another act that clearly indicates the individual's objection.
- (4) If the individual objects under Subsection (3), the finding under Subsection 75A-9-103(2) is not sufficient to rebut a presumption of capacity in Subsection 75A-9-103(1) and the individual must be treated as having capacity unless:
- (a) the individual withdraws the objection;
 - (b) a court finds the individual lacks the presumed capacity;
 - (c) the individual is experiencing a health condition requiring a decision regarding health care treatment to be made promptly to avoid imminent loss of life or serious harm to the health of the individual; or
 - (d) subject to Subsection (5), the finding is confirmed by a second finding made by an individual authorized under Subsection 75A-9-103(2)(a) who:
 - (i) did not make the first finding;
 - (ii) is not a family member of the individual who made the first finding; and
 - (iii) is not the cohabitant of the individual who made the first finding or a descendant of the cohabitant.
- (5) A second finding that the individual lacks capacity under Subsection (4)(d) is not sufficient to rebut the presumption of capacity if the individual is requesting the provision or continuation of life-sustaining treatment and the finding is being used to make a decision to withhold or withdraw the treatment.
- (6) As soon as reasonably feasible, a health care professional who is informed of an objection under Subsection (3) shall:
- (a) communicate the objection to a responsible health care professional; and

(b) document the objection and the date of the objection in the individual's medical record or communicate the objection and the date of the objection to an administrator with responsibility for medical records of the health care institution providing health care to the individual, who shall document the objection and the date of the objection in the individual's medical record.

Section 7. Section **75A-9-105** is enacted to read:

75A-9-105 . Judicial review of finding of lack of capacity.

- (1) An individual found under Subsection 75A-9-103(2) to lack capacity, a responsible health care professional, the health care institution providing health care to the individual, or a person interested in the welfare of the individual may petition the court in the county in which the individual resides or is located to determine whether the individual lacks capacity.
- (2)(a) The court in which a petition under Subsection (1) is filed shall appoint legal counsel to represent the individual if the individual does not have legal counsel.
- (b) The court shall hear the petition as soon as possible.
- (c) As soon as possible the court shall determine whether the individual lacks capacity.
- (d) The court may determine the individual lacks capacity only if the court finds by clear and convincing evidence that the individual lacks capacity.

Section 8. Section **75A-9-106** is enacted to read:

75A-9-106 . Health care instructions.

- (1) An individual may create a health care instruction that expresses the individual's preferences for future health care, including preferences regarding:
- (a) health care professionals or health care institutions;
- (b) how a health care decision will be made and communicated;
- (c) persons that should or should not be consulted regarding a health care decision;
- (d) a person to serve as guardian for the individual if one is appointed; and
- (e) an individual to serve as a default surrogate.
- (2) A health care professional to whom an individual communicates or provides an instruction under Subsection (1) shall document the instruction and the date of the instruction in the individual's medical record or communicate the instruction and date of the instruction to an administrator with responsibility for medical records of the health care institution providing health care to the individual, who shall document the instruction and the date of the instruction in the individual's medical record.
- (3) A health care instruction made by an individual that conflicts with an earlier health care

instruction made by the individual, including an instruction documented in a medical order, revokes the earlier instruction to the extent of the conflict.

- (4) A health care instruction may be in the same record as a power of attorney for health care.

Section 9. Section **75A-9-107** is enacted to read:

75A-9-107 . Power of attorney for health care.

- (1) An individual may create a power of attorney for health care to appoint an agent to make health care decisions for the individual.

- (2) An individual is disqualified from acting as agent for an individual who lacks capacity to make health care decisions if:

- (a) a court finds that the potential agent poses a danger to the individual's well-being, even if the court does not issue a protective order against the potential agent; or
- (b) the potential agent is an owner, operator, employee, or contractor of a nursing home or assisted living facility in which the individual resides or is receiving care, unless the owner, operator, employee, or contractor is a family member of the individual, the cohabitant of the individual, or a descendant of the cohabitant.

- (3) A health care decision made by an agent is effective without judicial approval.

- (4) A power of attorney for health care must be in a record, signed by the individual creating the power, and signed by an adult witness who:

- (a) reasonably believes the act of the individual to create the power of attorney is voluntary and knowing;
- (b) is not:
 - (i) the agent appointed by the individual;
 - (ii) the agent's spouse or cohabitant; or
 - (iii) if the individual resides or is receiving care in a nursing home or assisted living facility, the owner, operator, employee, or contractor of the nursing home or assisted living facility; and
- (c) is present when the individual signs the power of attorney or when the individual represents that the power of attorney reflects the individual's wishes.

- (5) A witness under Subsection (4) is considered present if the witness and the individual are:

- (a) physically present in the same location;
- (b) using electronic means that allow for real time audio and visual transmission and communication in real time to the same extent as if the witness and the individual

607 were physically present in the same location; or

608 (c) able to speak to and hear each other in real time through audio connection if:

609 (i) the identity of the individual is personally known to the witness; or

610 (ii) the witness is able to authenticate the identity of the individual by receiving
611 accurate answers from the individual that enable the authentication.

612 (6) A power of attorney for health care may include a health care instruction.

613 Section 10. Section **75A-9-108** is enacted to read:

614 **75A-9-108 . Advance mental health care directive.**

615 (1)(a) An individual may create an advance health care directive that addresses only
616 mental health care for the individual.

617 (b) The directive may include a health care instruction, a power of attorney for health
618 care, or both.

619 (2) A health care instruction under this section may include the individual's:

620 (a) general philosophy and objectives regarding mental health care; or

621 (b) specific goals, preferences, and wishes regarding the provision, withholding, or
622 withdrawal of a form of mental health care, including:

623 (i) preferences regarding professionals, programs, and facilities;

624 (ii) admission to a mental-health facility, including duration of admission;

625 (iii) preferences regarding medications;

626 (iv) refusal to accept a specific type of mental health care, including a medication; and

627 (v) preferences regarding crisis intervention.

628 (3) A power of attorney for health care under this section may appoint an agent to make
629 decisions only for mental health care.

630 Section 11. Section **75A-9-109** is enacted to read:

631 **75A-9-109 . Relationship of advance mental health care directive and other**
632 **advance health care directive.**

633 (1) If a direction in an advance mental health care directive of an individual conflicts with a
634 direction in another advance health care directive of the individual, the later direction
635 revokes the earlier direction to the extent of the conflict.

636 (2)(a) An appointment of an agent to make decisions only for mental health care for an
637 individual does not revoke an earlier appointment of an agent to make other health
638 care decisions for the individual.

639 (b) A later appointment revokes the authority of an agent under the earlier appointment
640 to make decisions about mental health care unless otherwise specified in the power of

attorney making the later appointment.

(3) An appointment of an agent to make health care decisions for an individual other than decisions about mental health care made after appointment of an agent authorized to make only mental health care decisions does not revoke the appointment of the agent authorized to make only mental health care decisions.

Section 12. Section **75A-9-110** is enacted to read:

75A-9-110 . Optional form.

The following form may be used to create an advance health care directive:

ADVANCE HEALTH CARE DIRECTIVE

HOW YOU CAN USE THIS FORM

You can use this form if you wish to name someone to make health care decisions for you in case you cannot make decisions for yourself. This is called giving the person a power of attorney for health care. This person is called your Agent.

You can also use this form to state your wishes, preferences, and goals for health care, and to say if you want to be an organ donor after you die.

YOUR NAME AND DATE OF BIRTH

Name:

Date of birth:

PART A: NAMING AN AGENT

This part lets you name someone else to make health care decisions for you. You may leave any item blank.

1. NAMING AN AGENT

I want the following person to make health care decisions for me if I cannot make

675 decisions for myself:

676

677 Name:

678

679 Optional contact information (it is helpful to include information such as address, phone,
680 and email):

681

682 2. NAMING AN ALTERNATE AGENT

683

684 I want the following person to make health care decisions for me if I cannot and my
685 Agent is not able or available to make them for me:

686

687 Name:

688

689 Optional contact information (it is helpful to include information such as address, phone,
690 and email):

691

692 3. LIMITING YOUR AGENT'S AUTHORITY

693

694 I give my Agent the power to make all health care decisions for me if I cannot make
695 those decisions for myself, except the following:

696

697 (If you do not add a limitation here, your Agent will be able to make all health care
698 decisions that an Agent is permitted to make under state law.)

699

700 PART B: HEALTH CARE INSTRUCTIONS

701

702 This part lets you state your priorities for health care and to state types of health care you
703 do and do not want.

704

705 1. INSTRUCTIONS ABOUT LIFE-SUSTAINING TREATMENT

706

707 This section gives you the opportunity to say how you want your Agent to act while making
708 decisions for you. You may mark or initial each choice. You also may leave any choice blank.

709

710 Treatment. Medical treatment needed to keep me alive but not needed for comfort or any
711 other purpose should (mark or initial all that apply):

712 () Always be given to me. (If you mark or initial this choice, you should not mark
713 or initial other choices in this "treatment" section.)

714 () Not be given to me if I have a condition that is not curable and is expected to
715 cause my death soon, even if treated.

716 () Not be given to me if I am unconscious and I am not expected to be conscious
717 again.

718 () Not be given to me if I have a medical condition from which I am not expected
719 to recover that prevents me from communicating with people I care about, caring for myself,
720 and recognizing family and friends.

721 () Other (write what you want or do not want):

722

723

724 Food and liquids. If I can't swallow and staying alive requires me to get food or liquids
725 through a tube or other means for the rest of my life, then food or liquids should (mark or
726 initial all that apply):

727 () Always be given to me. (If you mark or initial this choice, you should not mark
728 or initial other choices in this food and liquids section.)

729 () Not be given to me if I have a condition that is not curable and is expected to
730 cause me to die soon, even if treated.

731 () Not be given to me if I am unconscious and am not expected to be conscious
732 again.

733 () Not be given to me if I have a medical condition from which I am not expected
734 to recover that prevents me from communicating with people I care about, caring for myself,
735 and recognizing family and friends.

736 () Other (write what you want or do not want):

737

738

739 Pain relief. If I am in significant pain, care that will keep me comfortable but is likely to
740 shorten my life should (mark or initial all that apply):

741 () Always be given to me. (If you mark or initial this choice, you should not mark
742 or initial other choices in this pain relief section.)

☐ Never be given to me. (If you mark or initial this choice, you should not mark or initial other choices in this pain relief section.)

☐ Be given to me if I have a condition that is not curable and is expected to cause me to die soon, even if treated.

☐ Be given to me if I am unconscious and am not expected to be conscious again.

☐ Be given to me if I have a medical condition from which I am not expected to recover that prevents me from communicating with people I care about, caring for myself, and recognizing family and friends.

☐ Other (write what you want or do not want):

2. MY PRIORITIES

You can use this section to indicate what is important to you, and what is not important to you. This information can help your Agent make decisions for you if you cannot. It also helps others understand your preferences.

You may mark or initial each choice. You also may leave any choice blank.

Staying alive as long as possible even if I have substantial physical limitations is:

☐ Very important

☐ Somewhat important

☐ Not important

Staying alive as long as possible even if I have substantial mental limitations is:

☐ Very important

☐ Somewhat important

☐ Not important

Being free from significant pain is:

☐ Very important

☐ Somewhat important

☐ Not important

777 Being independent is:

778 () Very important

779 () Somewhat important

780 () Not important

781

782 Having my Agent talk with my family before making decisions about my care is:

783 () Very important

784 () Somewhat important

785 () Not important

786

787 Having my Agent talk with my friends before making decisions about my care is:

788 () Very important

789 () Somewhat important

790 () Not important

791

792 3. OTHER INSTRUCTIONS

793

794 You can write in this section more information about your goals, values, and preferences
795 for treatment, including care you want or do not want. You can also use this section to name
796 anyone who you do not want to make decisions for you under any conditions.

797

798 PART C: OPTIONAL SPECIAL POWERS AND GUIDANCE

799

800 This part lets you give your Agent additional powers and provide more guidance about your
801 wishes. You may mark or initial each choice. You also may leave any choice blank.

802

803 1. OPTIONAL SPECIAL POWERS

804

805 My Agent can do the following things ONLY if I have marked or initialed them below:

806

807 () Admit me as a voluntary patient to a facility for mental health treatment for
808 up to _____ days (write in the number of days you want like 7, 14, 30, or another number).

809 (If I do not mark or initial this choice, my Agent MAY NOT admit me as a voluntary
810 patient to this type of facility.)

811

812 () Place me in a nursing home for more than 100 days even if my needs can be
813 met somewhere else, I am not terminally ill, and I object.

814 (If I do not mark or initial this choice, my Agent MAY NOT do this.)

815

816 2. ACCESS TO MY HEALTH INFORMATION

817

818 My Agent may obtain, examine, and share information about my health needs and health
819 care if I am not able to make decisions for myself. If I mark or initial below, my Agent may
820 also do that at any time my Agent thinks it will help me.

821

822 () I give my Agent permission to obtain, examine, and share information about
823 my health needs and health care whenever my Agent thinks it will help me.

824

825 3. FLEXIBILITY FOR MY AGENT

826

827 Mark or initial below if you want to give your Agent flexibility in following instructions
828 you provide in this form. If you do not, your Agent must follow the instructions even if your
829 Agent thinks something else would be better for you.

830

831 () I give my Agent permission to be flexible in applying these instructions if my
832 Agent thinks it would be in my best interest based on what my Agent knows about me.

833

834 4. NOMINATION OF GUARDIAN

835

836 You can say who you would want as your guardian if you needed one. A guardian is a
837 person appointed by a court to make decisions for someone who cannot make decisions.
838 Filling this out does NOT mean you want or need a guardian.

839

840 If a court appoints a guardian to make personal decisions for me, I want the court to
841 choose:

842 () My Agent named in this form. If my Agent cannot be a guardian, I want the
843 Alternate Agent named in this form.

844 () Other (write who you would want and their contact information):

PART D: ORGAN DONATION

This part lets you donate your organs after you die. You may leave any item blank.

1. DONATION

You may mark or initial only one choice.

() I donate my organs, tissues, and other body parts after I die, even if it requires maintaining treatments that conflict with other instructions I have put in this form, EXCEPT for those I list below (list any body parts you do NOT want to donate):

() I do not want my organs, tissues, or body parts donated to anybody for any reason. (If you mark or initial this choice, you should skip the purpose of donation section.)

2. PURPOSE OF DONATION

You may mark or initial all that apply. (If you do not mark or initial any of the purposes below, your donation can be used for all of them.)

Organs, tissues, or body parts that I donate may be used for:

() Transplant

() Therapy

() Research

() Education

() All of the above

PART E: SIGNATURES

YOUR SIGNATURE

Sign your name:

Today's date:

879

880 City/Town/Village and State (optional):

881

882 SIGNATURE OF A WITNESS

883

884 You need a witness if you are using this form to name an Agent. The witness must be an885 adult and cannot be the person you are naming as Agent or the Agent's spouse or someone the886 Agent lives with as a couple. If you live or are receiving care in a nursing home, the witness887 cannot be an employee or contractor of the home or someone who owns or runs the home.

888

889 Name of Witness:

890

891 Signature of Witness: (Only sign as a witness if you think the person signing above is doing
892 it voluntarily.)

893

894 Date witness signed:

895

896 PART F: INFORMATION FOR AGENTS

897

898 1. If this form names you as an Agent, you can make decisions about health care for the
899 person who named you when the person cannot make their own.

900

901 2. If you make a decision for the person, follow any instructions the person gave, including
902 any in this form.

903

904 3. If you do not know what the person would want, make the decision that you think is in
905 the person's best interest. To figure out what is in the person's best interest, consider the
906 person's values, preferences, and goals if you know them or can learn them. Some of these
907 preferences may be in this form. You should also consider any behavior or communication
908 from the person that indicates what the person currently wants.

909

910 4. If this form names you as an Agent, you can also get and share the person's health
911 information. But unless the person has said so in this form, you can get or share this
912 information only when the person cannot make decisions about the person's health care.

Section 13. Section **75A-9-111** is enacted to read:

75A-9-111 . Default surrogate.

- (1) A default surrogate may make a health care decision for an individual who lacks capacity to make health care decisions and for whom an agent, or guardian authorized to make health care decisions, has not been appointed or is not reasonably available.
- (2) Unless the individual has an advance health care directive that indicates otherwise, a member of the following classes, in descending order of priority, who is reasonably available and not disqualified under Section 75A-9-113, may act as a default surrogate for the individual:
- (a) an adult the individual has identified, other than in a power of attorney for health care, to make a health care decision for the individual if the individual cannot make the decision;
 - (b) the individual's spouse unless:
 - (i) a petition for annulment, divorce, dissolution of marriage, legal separation, or termination has been filed and not dismissed or withdrawn;
 - (ii) a decree of annulment, divorce, dissolution of marriage, legal separation, or termination has been issued;
 - (iii) the individual and the spouse have agreed in a record to a legal separation; or
 - (iv) the spouse has willfully deserted the individual for more than one year;
 - (c) the individual's adult child or parent;
 - (d) the individual's cohabitant;
 - (e) the individual's adult sibling;
 - (f) the individual's adult grandchild or grandparent;
 - (g) an adult not listed in Subsections (2)(a) through (f) who has assisted the individual with supported decision making routinely during the preceding six months;
 - (h) the individual's adult stepchild not listed in Subsections (2)(a) through (g) whom the individual actively parented during the stepchild's minor years and with whom the individual has an ongoing relationship;
 - (i) an adult not listed in Subsections (2)(a) through (h) who has exhibited special care and concern for the individual and is familiar with the individual's personal values; or
 - (j) a physician designated in accordance with Subsection (6).
- (3)(a) A responsible health care professional may require an individual who assumes authority to act as a default surrogate to provide a declaration in a record under penalty of perjury stating facts and circumstances reasonably sufficient to establish

947 the authority.

948 (b) The Department of Health and Human Services shall create a uniform form to be
949 used in accordance with Subsection (3)(a).

950 (4) If a responsible health care professional reasonably determines that an individual who
951 assumed authority to act as a default surrogate is not willing or able to comply with a
952 duty under Section 75A-9-116 or fails to comply with the duty in a timely manner, the
953 professional may recognize the individual next in priority under Subsection (2) as the
954 default surrogate.

955 (5) A health care decision made by a default surrogate is effective without judicial approval.

956 (6) If an individual resides in or is receiving care in a health care institution, and is
957 determined to lack capacity to make a health care decision, the responsible health care
958 professional may designate a willing physician to make the decision on behalf of the
959 individual if:

960 (a) the responsible health care professional, or person acting under the supervision of the
961 responsible health care professional, after using best efforts cannot identify and
962 locate:

- 963 (i) an agent who has been appointed by the individual to make health care decisions;
964 (ii) a guardian authorized to make health care decisions for the individual; or
965 (iii) a default surrogate under Subsections (2)(a) through (i);

966 (b)(i) the responsible health care professional has consulted with and obtained a
967 consensus on the designation with the medical ethics committee of the health care
968 institution where the individual resides or is receiving care; or
969 (ii) if no medical ethics committee exists within the health care institution, has
970 consulted with and obtained consensus from a similar entity utilized by the health
971 care institution;

972 (c) the physician designated to act as default surrogate under this subsection is not:

- 973 (i) providing health care to the individual;
974 (ii) under the actual or constructive authority of the responsible health care
975 professional;
976 (iii) a family member or cohabitant of the responsible health care professional; or
977 (iv) disqualified from acting as default surrogate under Section 75A-9-113;

978 (d) the responsible health care professional informs the individual of the designation of a
979 willing physician, the identity of the designated physician, and of the individual's
980 right to object to the designation; and

(e) the identity of the physician designated by the responsible health care professional is documented in the individual's medical record.

(7) The power of a physician designated under Subsection (6) to act as default surrogate terminates if:

(a) a person listed in Subsections (2)(a) through (i) is identified and located and is reasonably available and willing to serve as default surrogate;

(b) the individual no longer is residing in or receiving care from the health care institution; or

(c) the conditions in Subsection (1) do not exist.

(8) If the authority of the responsible health care professional to make the designation under Subsection (6) or the authority of the physician designated by the responsible health care professional to make a health care decision for the individual terminates for any reason, including a reason designated in Subsection (7), the responsible health care professional shall document the termination and the reason in the individual's medical record.

(9) In making a health care decision on behalf of the individual, a physician designated to act as default surrogate under Subsection (6):

(a) shall comply with the duties of a default surrogate set forth in Section 75A-9-116; and

(b) may consult with the medical ethics committee or similar entity and rely on the committee or entity's evaluation of the individual's best interest if the goals,

preferences, and wishes of the individual regarding a health care decision are not known or reasonably ascertainable by the physician.

Section 14. Section **75A-9-112** is enacted to read:

75A-9-112 . Disagreement among default surrogates.

(1) A default surrogate who assumes authority under Section 75A-9-111 shall inform a responsible health care professional if two or more members of a class under Subsection 75A-9-111(2) have assumed authority to act as default surrogates and the members do not agree on a health care decision.

(2) A responsible health care professional shall comply with the decision of a majority of the members of the class with highest priority under Subsection 75A-9-111(2) who have communicated their views to the professional and the professional reasonably believes are acting consistent with their duties under Section 75A-9-116.

(3)(a) If a responsible health care professional is informed that the members of the class who have communicated their views to the professional are evenly divided concerning the health care decision, the default surrogate who assumes authority

under Section 75A-9-111 shall make a reasonable effort to solicit the views of members of the class who are reasonably available but have not yet communicated their views to the professional.

(b) The professional, after the solicitation, shall comply with the decision of a majority of the members who have communicated their views to the professional and the professional reasonably believes are acting consistent with their duties under Section 75A-9-116.

(4) If the class remains evenly divided after the effort is made under Subsection (3), the health care decision must be made as provided by other law of this state regarding the treatment of an individual who is found to lack capacity.

Section 15. Section **75A-9-113** is enacted to read:

75A-9-113 . Disqualification to act as default surrogate.

(1)(a) An individual for whom a health care decision would be made may disqualify another individual from acting as default surrogate for the first individual.

(b) The disqualification must be in a record signed by the first individual or communicated verbally or nonverbally to the individual being disqualified, another individual, or a responsible health care professional.

(c) Disqualification under this subsection is effective even if made by an individual who lacks capacity to make an advance directive if the individual clearly communicates a desire that the individual being disqualified not make health care decisions for the individual.

(2) An individual is disqualified from acting as a default surrogate for an individual who lacks capacity to make health care decisions if:

(a) a court finds that the potential default surrogate poses a danger to the individual's well-being, even if the court does not issue a protective order against the potential surrogate;

(b) the potential default surrogate is an owner, operator, employee, or contractor of a nursing home or assisted living facility in which the individual is residing or receiving care unless the owner, operator, employee, or contractor is a family member of the individual, the cohabitant of the individual, or a descendant of the cohabitant; or

(c) the potential default surrogate refuses to provide a timely declaration under Subsection 75A-9-111(3).

Section 16. Section **75A-9-114** is enacted to read:

75A-9-114 . Revocation.

- (1) An individual may revoke the appointment of an agent, the designation of a default surrogate, or a health care instruction in whole or in part, unless:
- (a) a court finds the individual lacks capacity to do so; or
- (b) the individual is found under Subsection 75A-9-103(2) to lack capacity to do so and, if the individual objects to the finding, the finding is confirmed under Subsection 75A-9-104(4)(d).
- (2) Revocation under Subsection (1) may be by any act of the individual that clearly indicates that the individual intends to revoke the appointment, designation, or instruction, including an oral statement to a health care professional.
- (3) Except as provided in Section 75A-9-109, an advance health care directive of an individual that conflicts with another advance health care directive of the individual revokes the earlier directive to the extent of the conflict.
- (4) Unless otherwise provided in an individual's advance health care directive appointing an agent, the appointment of a spouse of an individual as agent for the individual is revoked if:
- (a) a petition for annulment, divorce, dissolution of marriage, legal separation, or termination has been filed and not dismissed or withdrawn;
- (b) a decree of annulment, divorce, dissolution of marriage, legal separation, or termination has been issued;
- (c) the individual and the spouse have agreed in a record to a legal separation; or
- (d) the spouse has willfully deserted the individual for more than one year.

Section 17. Section **75A-9-115** is enacted to read:

75A-9-115 . Validity of advance health care directive -- Conflict with other law.

- (1) An advance health care directive created outside this state is valid if it complies with:
- (a) the law of the state specified in the directive or, if a state is not specified, the state in which the individual created the directive; or
- (b) this chapter.
- (2) A person may assume without inquiry that an advance health care directive is genuine, valid, and still in effect, and may implement and rely on it, unless the person has good cause to believe the directive is invalid or has been revoked.
- (3) An advance health care directive, revocation of a directive, or a signature on a directive or revocation may not be denied legal effect or enforceability solely because it is in electronic form.

- (4) Evidence relating to an advance health care directive, revocation of a directive, or a signature on a directive or revocation may not be excluded in a proceeding solely because the evidence is in electronic form.
- (5) This chapter does not affect the validity of an electronic record or signature that is valid under Title 46, Chapter 4, Uniform Electronic Transactions Act.
- (6) If this chapter conflicts with other law of this state relating to the creation, execution, implementation, or revocation of an advance health care directive, this chapter prevails.
- Section 18. Section **75A-9-116** is enacted to read:
- 75A-9-116 . Duties of agent or default surrogate.**
- (1) An agent or default surrogate has a fiduciary duty to the individual for whom the agent or default surrogate is acting when exercising or purporting to exercise a power under Section 75A-9-117.
- (2) An agent or default surrogate shall make a health care decision in accordance with the direction of the individual in an advance health care directive and other goals, preferences, and wishes of the individual to the extent known or reasonably ascertainable by the agent or default surrogate.
- (3) If there is not a direction in an advance health care directive and the goals, preferences, and wishes of the individual regarding a health care decision are not known or reasonably ascertainable by the agent or default surrogate, the agent or default surrogate shall make the decision in accordance with the agent's or default surrogate's determination of the individual's best interest.
- (4) In determining the individual's best interest under Subsection (3), the agent or default surrogate shall:
- (a) give primary consideration to the individual's contemporaneous communications, including verbal and nonverbal expressions;
- (b) consider the individual's values to the extent known or reasonably ascertainable by the agent or default surrogate; and
- (c) consider the risks and benefits of the potential health care decision.
- (5) As soon as reasonably feasible, an agent or default surrogate who is informed of a revocation of an advance health care directive or disqualification of the agent or default surrogate shall communicate the revocation or disqualification to a responsible health care professional.

Section 19. Section **75A-9-117** is enacted to read:

75A-9-117 . Powers of agent and default surrogate.

- 1117 (1)(a) Except as provided in Subsection (3), the power of an agent or default surrogate
1118 commences when the individual is found under Subsection 75A-9-103(2) or by a
1119 court to lack capacity to make a health care decision.
- 1120 (b) The power ceases if the individual later is found to have capacity to make a health
1121 care decision, or the individual objects under Subsection 75A-9-104(3) to the finding
1122 of lack of capacity under Subsection 75A-9-103(2).
- 1123 (c) The power resumes if:
- 1124 (i) the power ceased because the individual objected under Subsection 75A-9-104(3);
1125 and
1126 (ii) the finding of lack of capacity is confirmed under Subsection 75A-9-104(4)(d) or
1127 a court finds that the individual lacks capacity to make a health care decision.
- 1128 (2) An agent or default surrogate may request, receive, examine, copy, and consent to the
1129 disclosure of medical and other health care information about the individual if the
1130 individual would have the right to request, receive, examine, copy, or consent to the
1131 disclosure of the information.
- 1132 (3) A power of attorney for health care may provide that the power of an agent under
1133 Subsection (1) commences on appointment.
- 1134 (4)(a) If no other person is authorized to do so, an agent or default surrogate may apply
1135 for public or private health insurance and benefits on behalf of the individual.
- 1136 (b) An agent or default surrogate who may apply for insurance and benefits does not,
1137 solely by reason of the power, have a duty to apply for the insurance or benefits.
- 1138 (5) An agent or default surrogate may not consent to voluntary admission of the individual
1139 to a facility for mental health treatment unless:
- 1140 (a) voluntary admission is specifically authorized by the individual in an advance health
1141 care directive in a record; and
- 1142 (b) the admission is for no more than the maximum of the number of days specified in
1143 the directive.
- 1144 (6) Except as provided in Subsection (7), an agent or default surrogate may not consent to
1145 placement of the individual in a nursing home if the placement is intended to be for
1146 more than 100 days if:
- 1147 (a) an alternative living arrangement is reasonably feasible;
1148 (b) the individual objects to the placement; or
1149 (c) the individual is not terminally ill.
- 1150 (7) If specifically authorized by the individual in an advance health care directive in a

record, an agent or default surrogate may consent to placement of the individual in a nursing home for more than 100 days even if:

- (a) an alternative living arrangement is reasonably feasible;
- (b) the individual objects to the placement; and
- (c) the individual is not terminally ill.

Section 20. Section **75A-9-118** is enacted to read:

75A-9-118 . Limitations on powers.

- (1) If an individual has a long-term disability requiring routine treatment by artificial nutrition, hydration, or mechanical ventilation and a history of using the treatment without objection, an agent or default surrogate may not consent to withhold or withdraw the treatment unless:
- (a) the treatment is not necessary to sustain the individual's life or maintain the individual's well-being;
 - (b) the individual has expressly authorized the withholding or withdrawal in a health care instruction that has not been revoked; or
 - (c) the individual has experienced a major reduction in health or functional ability from which the individual is not expected to recover, even with other appropriate treatment, and the individual has not:
 - (i) given a direction inconsistent with withholding or withdrawal; or
 - (ii) communicated by verbal or nonverbal expression a desire for artificial nutrition, hydration, or mechanical ventilation.

- (2) A default surrogate may not make a health care decision if, under other law of this state, the decision:

- (a) may not be made by a guardian; or
- (b) may be made by a guardian only if the court appointing the guardian specifically authorizes the guardian to make the decision.

Section 21. Section **75A-9-119** is enacted to read:

75A-9-119 . Co-agents -- Alternate agent.

- (1)(a) An individual in a power of attorney for health care may appoint multiple individuals as co-agents.
- (b) Unless the power of attorney provides otherwise, each co-agent may exercise independent authority.
- (2) An individual in a power of attorney for health care may appoint one or more individuals to act as alternate agents if a predecessor agent resigns, dies, becomes

1185 disqualified, is not reasonably available, or otherwise is unwilling or unable to act as
1186 agent.

1187 (3) Unless the power of attorney provides otherwise, an alternate agent has the same
1188 authority as the original agent:

1189 (a) at any time the original agent is not reasonably available or is otherwise unwilling or
1190 unable to act, for the duration of the unavailability, unwillingness, or inability to act;
1191 or

1192 (b) if the original agent and all other predecessor agents have resigned or died or are
1193 disqualified from acting as agent.

1194 Section 22. Section **75A-9-120** is enacted to read:

1195 **75A-9-120 . Duties of health care professional, responsible health care**
1196 **professional, and health care institution.**

1197 (1) A responsible health care professional who is aware that an individual has been found to
1198 lack capacity to make a decision shall make a reasonable effort to determine if the
1199 individual has a surrogate.

1200 (2) If possible before implementing a health care decision made by a surrogate, a
1201 responsible health care professional as soon as reasonably feasible shall communicate to
1202 the individual the decision made and the identity of the surrogate.

1203 (3) A responsible health care professional who makes or is informed of a finding that an
1204 individual lacks capacity to make a health care decision or no longer lacks capacity, or
1205 that other circumstances exist that affect a health care instruction or the authority of a
1206 surrogate, as soon as reasonably feasible, shall:

1207 (a) document the finding or circumstance in the individual's medical record; and

1208 (b) if possible, communicate to the individual and the individual's surrogate the finding
1209 or circumstance and that the individual may object under Subsection 75A-9-104(3) to
1210 the finding under Subsection 75A-9-103(2).

1211 (4) A responsible health care professional who is informed that an individual has created or
1212 revoked an advance health care directive, or that a surrogate for an individual has been
1213 appointed, designated, or disqualified, shall:

1214 (a) document the information as soon as reasonably feasible in the individual's medical
1215 record; and

1216 (b) if evidence of the directive, revocation, appointment, designation, or disqualification
1217 is in a record, request a copy and, on receipt, cause the copy to be included in the
1218 individual's medical record.

- 1219 (5) Except as provided in Subsections (6) and (7), a health care professional or health care
1220 institution providing health care to an individual shall comply with:
- 1221 (a) a health care instruction given by the individual regarding the individual's health care;
1222 (b) a reasonable interpretation by the individual's surrogate of an instruction given by the
1223 individual; and
1224 (c) a health care decision for the individual made by the individual's surrogate in
1225 accordance with Sections 75A-9-116 and 75A-9-117 to the same extent as if the
1226 decision had been made by the individual at a time when the individual had capacity.
- 1227 (6) A health care professional or a health care institution may refuse to provide health care
1228 consistent with a health care instruction or health care decision if:
- 1229 (a) the instruction or decision is contrary to a policy of the health care institution
1230 providing care to the individual that is based expressly on reasons of conscience and
1231 the policy was timely communicated to the individual or to the individual's surrogate;
1232 (b) the care would require health care that is not available to the professional or
1233 institution; or
1234 (c) compliance with the instruction or decision would:
- 1235 (i) require the professional to provide care that is contrary to the professional's
1236 religious belief or moral conviction if other law permits the professional to refuse
1237 to provide care for that reason;
1238 (ii) require the professional or institution to provide care that is contrary to generally
1239 accepted health care standards applicable to the professional or institution; or
1240 (iii) violate a court order or other law.
- 1241 (7) A health care professional or health care institution that refuses to provide care under
1242 Subsection (6) shall:
- 1243 (a) as soon as reasonably feasible, inform the individual, if possible, and the individual's
1244 surrogate of the refusal;
1245 (b) immediately make a reasonable effort to transfer the individual to another health care
1246 professional or health care institution that is willing to comply with the instruction or
1247 decision; and
1248 (c) either:
- 1249 (i) if care is refused under Subsection (6)(a) or (b), provide life-sustaining care and
1250 care needed to keep or make the individual comfortable, consistent with accepted
1251 medical standards to the extent feasible, until a transfer is made; or
1252 (ii) if care is refused under Subsection (6)(c), provide life-sustaining care and care

needed to keep or make the individual comfortable, consistent with accepted medical standards, until a transfer is made or, if the professional or institution reasonably believes that a transfer cannot be made, for at least 10 days after the refusal.

Section 23. Section **75A-9-121** is enacted to read:

75A-9-121 . Decision by guardian.

- (1) A guardian may refuse to comply with or revoke the individual's advance health care directive only if the court appointing the guardian expressly orders the noncompliance or revocation.
- (2) Unless a court orders otherwise, a health care decision made by an agent appointed by an individual subject to guardianship prevails over a decision of the guardian appointed for the individual.

Section 24. Section **75A-9-122** is enacted to read:

75A-9-122 . Immunity.

- (1) A health care professional or health care institution acting in good faith is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
 - (a) complying with a health care decision made for an individual by another person if compliance is based on a reasonable belief that the person has authority to make the decision, including a decision to withhold or withdraw health care;
 - (b) refusing to comply with a health care decision made for an individual by another person if the refusal is based on a reasonable belief that the person lacked authority or capacity to make the decision;
 - (c) complying with an advance health care directive based on a reasonable belief that the directive is valid;
 - (d) refusing to comply with an advance health care directive based on a reasonable belief that the directive is not valid, including a reasonable belief that the directive was not made by the individual or, after its creation, was substantively altered by a person other than the individual who created it; or
 - (e) determining that an individual who otherwise might be authorized to act as an agent or default surrogate is not reasonably available.
- (2) An agent, default surrogate, or individual with a reasonable belief that the individual is an agent or a default surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for a health care decision made in a good faith effort to comply with Section 75A-9-116.

Section 25. Section **75A-9-123** is enacted to read:

75A-9-123 . Prohibited conduct -- Damages.

(1) A person may not:

(a) intentionally falsify, in whole or in part, an advance health care directive;

(b) for the purpose of frustrating the intent of the individual who created an advance health care directive or with knowledge that doing so is likely to frustrate the intent:

(i) intentionally conceal, deface, obliterate, or delete the directive or a revocation of the directive without consent of the individual who created or revoked the directive; or

(ii) intentionally withhold knowledge of the existence or revocation of the directive from a responsible health care professional or health care institution providing health care to the individual who created or revoked the directive;

(c) coerce or fraudulently induce an individual to create, revoke, or refrain from creating or revoking an advance health care directive or a part of a directive; or

(d) require or prohibit the creation or revocation of an advance health care directive as a condition for providing health care.

(2) An individual who is the subject of conduct prohibited under Subsection (1), or the individual's estate, has a cause of action against a person that violates Subsection (1) for statutory damages of \$25,000 or actual damages resulting from the violation, whichever is greater.

(3) Subject to Subsection (4), an individual who makes a health care instruction, or the individual's estate, has a cause of action against a health care professional or health care institution that intentionally violates Section 75A-9-120 for statutory damages of \$50,000 or actual damages resulting from the violation, whichever is greater.

(4) A health care professional who is an emergency medical services provider is not liable under Subsection (3) for a violation of Subsection 75A-9-120(5) if:

(a) the violation occurs in the course of providing care to an individual experiencing a health condition for which the emergency medical services provider reasonably believes the care was appropriate to avoid imminent loss of life or serious harm to the individual;

(b) the failure to comply is consistent with accepted standards of the profession of the emergency medical services provider; and

(c) the provision of care does not begin in a health care institution in which the individual resides or was receiving care.

(5) In an action under this section, a prevailing plaintiff may recover reasonable attorney fees, court costs, and other reasonable litigation expenses.

(6) A cause of action or remedy under this section is in addition to any cause of action or remedy under other law.

Section 26. Section **75A-9-124** is enacted to read:

75A-9-124 . Effect of copy -- Certified physical copy.

(1) A physical or electronic copy of an advance health care directive, revocation of an advance health care directive, or appointment, designation, or disqualification of a surrogate has the same effect as the original.

(2) An individual may create a certified physical copy of an advance health care directive or revocation of an advance health care directive that is in electronic form by affirming under penalty of perjury that the physical copy is a complete and accurate copy of the directive or revocation.

Section 27. Section **75A-9-125** is enacted to read:

75A-9-125 . Judicial relief.

(1) On petition of an individual, the individual's surrogate, a health care professional or health care institution providing health care to the individual, or a person interested in the welfare of the individual, the court may:

(a) enjoin implementation of a health care decision made by an agent or default surrogate on behalf of the individual, on a finding that the decision is inconsistent with Section 75A-9-116 or 75A-9-117;

(b) enjoin an agent from making a health care decision for the individual, on a finding that the individual's appointment of the agent has been revoked or the agent:

(i) is disqualified under Subsection 75A-9-107(2);

(ii) is unwilling or unable to comply with Section 75A-9-116; or

(iii) poses a danger to the individual's well-being;

(c) enjoin another individual from acting as a default surrogate, on a finding that the other individual:

(i) acting as a default surrogate did not comply with Section 75A-9-111;

(ii) is disqualified under Section 75A-9-113;

(iii) is unwilling or unable to comply with Section 75A-9-116;

(iv) poses a danger to the first individual's well-being; or

(d) order implementation of a health care decision made:

(i) by and for the individual; or

(ii) by an agent or default surrogate who is acting in compliance with the powers and duties of the agent or default surrogate.

- (2) In this chapter, advocacy for the withholding or withdrawal of health care or mental health care from an individual is not itself evidence that an agent or default surrogate, or a potential agent or default surrogate, poses a danger to the individual's well-being.
- (3) A proceeding under this chapter is governed by the Utah Rules of Civil Procedure and shall be expedited by the court.

Section 28. Section **75A-9-126** is enacted to read:

75A-9-126 . Construction.

- (1) This chapter does not authorize mercy killing, assisted suicide, or euthanasia.
- (2) This chapter does not affect other law of this state governing treatment for mental illness of an individual involuntarily committed under Section 26B-5-332.
- (3) Death of an individual caused by withholding or withdrawing health care in accordance with this chapter does not constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity.
- (4) This chapter does not create a presumption concerning the intention of an individual who has not created an advance health care directive.
- (5) An advance health care directive created before, on, or after January 1, 2026, shall be interpreted in accordance with law of this state, excluding the state's choice-of-law rules, at the time the directive is implemented.

Section 29. Section **75A-9-127** is enacted to read:

75A-9-127 . Uniformity of application and construction.

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

Section 30. Section **75A-9-128** is enacted to read:

75A-9-128 . Saving provision.

- (1) An advance health care directive created before January 1, 2026, is valid if it complies with this chapter or complied at the time of creation with the law of the state in which it was created.
- (2) This chapter does not affect the validity or effect of an act done before January 1, 2026.
- (3) An individual who assumed authority to act as default surrogate before January 1, 2026, may continue to act as default surrogate until the individual for whom the default surrogate is acting has capacity or the default surrogate is disqualified, whichever occurs

1389 first.

1390 Section 31. Section **75A-9-129** is enacted to read:

1391 **75A-9-129 . Transitional provision.**

1392 This chapter applies to an advance health care directive created before, on, or after
1393 January 1, 2026.

1394 Section 32. **Repealer.**

1395 This bill repeals:

1396 Section **75A-3-102, Intent statement.**

1397 Section **75A-3-103, Effect of chapter.**

1398 Section **75A-3-104, Provisions cumulative with existing law.**

1399 Section **75A-3-105, Severability.**

1400 Section **75A-3-107, Judicial relief.**

1401 Section **75A-3-201, Capacity to make health care decisions -- Presumption --**
1402 **Overcoming presumption.**

1403 Section **75A-3-202, Effect of current health care preferences -- Health care decision**
1404 **making.**

1405 Section **75A-3-203, Default surrogates.**

1406 Section **75A-3-204, Surrogate decision making -- Scope of authority.**

1407 Section **75A-3-205, Health care decisions by guardian.**

1408 Section **75A-3-206, Priority of decision makers.**

1409 Section **75A-3-207, Notification to health care provider -- Obligations of health care**
1410 **providers -- Liability.**

1411 Section **75A-3-208, Personal representative status.**

1412 Section **75A-3-301, Advance health care directive -- Appointment of agent -- Powers of**
1413 **agent.**

1414 Section **75A-3-302, Capacity to complete an advance health care directive.**

1415 Section **75A-3-303, Optional form for advance health care directive.**

1416 Section **75A-3-304, Presumption of validity of advance health care directive.**

1417 Section **75A-3-305, Advance health care directive effect on insurance policies.**

1418 Section **75A-3-306, Advance health care directive effect during pregnancy.**

1419 Section **75A-3-307, Revocation of advance health care directive.**

1420 Section **75A-3-308, Illegal destruction or falsification of advance health care directive.**

1421 Section **75A-3-309, Reciprocity of advance health care directive -- Application of former**
1422 **provisions of law.**

1423 Section 33. **Effective Date.**

1424 This bill takes effect on January 1, 2026.