

## **Chapter 2a**

### **Advance Health Care Directive Act**

#### **75-2a-101 Title.**

This chapter is known as the "Advance Health Care Directive Act."

Enacted by Chapter 31, 2007 General Session

#### **75-2a-102 Intent statement.**

- (1) The Legislature finds:
- (a) developments in health care technology make possible many alternatives for treating medical conditions and make possible the unnatural prolongation of life;
  - (b) an adult should have the clear legal choice to:
    - (i) accept or reject health care, even if rejecting health care will result in death sooner than death would be expected to occur if rejected health care were started or continued;
    - (ii) be spared unwanted procedures; and
    - (iii) be permitted to die with a maximum of dignity and function and a minimum of pain;
  - (c) Utah law should:
    - (i) provide an adult with a legal tool to designate a health care agent and express preferences about health care options to go into effect only after the adult loses the ability to make or communicate health care decisions, including decisions about end-of-life care; and
    - (ii) promote an advance health care directive system that can be administered effectively within the health care system;
  - (d) surrogate decisions made on behalf of an adult who previously had capacity to make health care decisions, but who has lost health care decision making capacity should be based on:
    - (i) input from the incapacitated adult, to the extent possible under the circumstances;
    - (ii) specific preferences expressed by the adult prior to the loss of health care decision making capacity;
    - (iii) the surrogate's understanding of the adult's health care preferences; and
    - (iv) the surrogate's understanding of what the adult would have wanted under the circumstances; and
  - (e) surrogate decisions made on behalf of an adult who has never had health care decision making capacity should be made on the basis of the adult's best interest.
- (2) In recognition of the dignity and privacy that each adult is entitled to expect, and to protect the right of an adult to refuse to be treated without the adult's consent, the Legislature declares that this state recognizes the right to make binding advance health care directives directing health care providers to:
- (a) provide life sustaining medically indicated health care;
  - (b) withhold or withdraw health care; or
  - (c) provide health care only to the extent set forth in an advance health care directive.

Amended by Chapter 107, 2008 General Session

#### **75-2a-103 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;
  - (b) may take one of the following forms:
    - (i) a written document, voluntarily executed by an adult in accordance with the requirements of this chapter; or
    - (ii) a witnessed oral statement, made in accordance with the requirements of this chapter; and
  - (c) does not include a POLST order.
- (3) "Agent" means an adult designated in an advance health care directive to make health care decisions for the declarant.
- (4) "APRN" means an individual who is:
  - (a) certified or licensed as an advance practice registered nurse under Subsection 58-31b-301(2) (e);
  - (b) an independent practitioner;
  - (c) acting under a consultation and referral plan with a physician; and
  - (d) acting within the scope of practice for that individual, as provided by law, rule, and specialized certification and training in that individual's area of practice.
- (5) "Best interest" means that the benefits to the person resulting from a treatment outweigh the burdens to the person resulting from the treatment, taking into account:
  - (a) the effect of the treatment on the physical, emotional, and cognitive functions of the person;
  - (b) the degree of physical pain or discomfort caused to the person by the treatment or the withholding or withdrawal of treatment;
  - (c) the degree to which the person's medical condition, the treatment, or the withholding or withdrawal of treatment, result in a severe and continuing impairment of the dignity of the person by subjecting the person to humiliation and dependency;
  - (d) the effect of the treatment on the life expectancy of the person;
  - (e) the prognosis of the person for recovery with and without the treatment;
  - (f) the risks, side effects, and benefits of the treatment, or the withholding or withdrawal of treatment; and
  - (g) the religious beliefs and basic values of the person receiving treatment, to the extent these may assist the decision maker in determining the best interest.
- (6) "Capacity to appoint an agent" means that the adult understands the consequences of appointing a particular person as agent.
- (7) "Declarant" means an adult who has completed and signed or directed the signing of an advance health care directive.
- (8) "Default surrogate" means the adult who may make decisions for an individual when either:
  - (a) an agent or guardian has not been appointed; or
  - (b) an agent is not able, available, or willing to make decisions for an adult.
- (9) "Emergency medical services provider" means a person that is licensed, designated, or certified under Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System.
- (10) "Generally accepted health care standards":
  - (a) is defined only for the purpose of:
    - (i) this chapter and does not define the standard of care for any other purpose under Utah law; and

- (ii) enabling health care providers to interpret the statutory form set forth in Section 75-2a-117; and
- (b) means the standard of care that justifies a provider in declining to provide life sustaining care because the proposed life sustaining care:
  - (i) will not prevent or reduce the deterioration in the health or functional status of an individual;
  - (ii) will not prevent the impending death of an individual; or
  - (iii) will impose more burden on the individual than any expected benefit to the individual.
- (11) "Health care" means any care, treatment, service, or procedure to improve, maintain, diagnose, or otherwise affect an individual's physical or mental condition.
- (12) "Health care decision":
  - (a) means a decision about an adult's health care made by, or on behalf of, an adult, that is communicated to a health care provider;
  - (b) includes:
    - (i) selection and discharge of a health care provider and a health care facility;
    - (ii) approval or disapproval of diagnostic tests, procedures, programs of medication, and orders not to resuscitate; and
    - (iii) directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care; and
  - (c) does not include decisions about an adult's financial affairs or social interactions other than as indirectly affected by the health care decision.
- (13) "Health care decision making capacity" means an adult's ability to make an informed decision about receiving or refusing health care, including:
  - (a) the ability to understand the nature, extent, or probable consequences of health status and health care alternatives;
  - (b) the ability to make a rational evaluation of the burdens, risks, benefits, and alternatives of accepting or rejecting health care; and
  - (c) the ability to communicate a decision.
- (14) "Health care facility" means:
  - (a) a health care facility as defined in Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection; and
  - (b) private offices of physicians, dentists, and other health care providers licensed to provide health care under Title 58, Occupations and Professions.
- (15) "Health care provider" means the same as that term is defined in Section 78B-3-403, except that "health care provider" does not include an emergency medical services provider.
- (16)
  - (a) "Life sustaining care" means any medical intervention, including procedures, administration of medication, or use of a medical device, that maintains life by sustaining, restoring, or supplanting a vital function.
  - (b) "Life sustaining care" does not include care provided for the purpose of keeping an individual comfortable.
- (17) "Minor" means an individual who:
  - (a) is under 18 years old; and
  - (b) is not an emancipated minor.
- (18) "Physician" means a physician and surgeon or osteopathic surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical Practice Act.
- (19) "Physician assistant" means an individual licensed as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act.

- (20) "POLST order" means an order, on a form designated by the Department of Health and Human Services under Section 75-2a-106, that gives direction to health care providers, health care facilities, and emergency medical services providers regarding the specific health care decisions of the individual to whom the order relates.
- (21) "Reasonably available" means:
- (a) readily able to be contacted without undue effort; and
  - (b) willing and able to act in a timely manner considering the urgency of the circumstances.
- (22) "Substituted judgment" means the standard to be applied by a surrogate when making a health care decision for an adult who previously had the capacity to make health care decisions, which requires the surrogate to consider:
- (a) specific preferences expressed by the adult:
    - (i) when the adult had the capacity to make health care decisions; and
    - (ii) at the time the decision is being made;
  - (b) the surrogate's understanding of the adult's health care preferences;
  - (c) the surrogate's understanding of what the adult would have wanted under the circumstances; and
  - (d) to the extent that the preferences described in Subsections (22)(a) through (c) are unknown, the best interest of the adult.
- (23) "Surrogate" means a health care decision maker who is:
- (a) an appointed agent;
  - (b) a default surrogate under the provisions of Section 75-2a-108; or
  - (c) a guardian.

Amended by Chapter 139, 2023 General Session

Amended by Chapter 330, 2023 General Session

**75-2a-104 Capacity to make health care decisions -- Presumption -- Overcoming presumption.**

- (1) An adult is presumed to have:
- (a) health care decision making capacity; and
  - (b) capacity to make or revoke an advance health care directive.
- (2) To overcome the presumption of capacity described in Subsection (1)(a), a physician, an APRN, or, subject to Subsection (6), a physician assistant who has personally examined the adult and assessed the adult's health care decision making capacity must:
- (a) find that the adult lacks health care decision making capacity;
  - (b) record the finding in the adult's medical chart including an indication of whether the adult is likely to regain health care decision making capacity; and
  - (c) make a reasonable effort to communicate the determination to:
    - (i) the adult;
    - (ii) other health care providers or health care facilities that the person who makes the finding would routinely inform of such a finding; and
    - (iii) if the adult has a surrogate, any known surrogate.
- (3)
- (a) An adult who is found to lack health care decision making capacity in accordance with Subsection (2) may, at any time, challenge the finding by:
    - (i) submitting to a health care provider a written notice stating that the adult disagrees with the physician's finding; or
    - (ii) orally informing the health care provider that the adult disagrees with the finding.

- (b) A health care provider who is informed of a challenge under Subsection (3)(a), shall, if the adult has a surrogate, promptly inform the surrogate of the adult's challenge.
- (c) A surrogate informed of a challenge to a finding under this section, or the adult if no surrogate is acting on the adult's behalf, shall inform the following of the adult's challenge:
  - (i) any other health care providers involved in the adult's care; and
  - (ii) the health care facility, if any, in which the adult is receiving care.
- (d) Unless otherwise ordered by a court, a finding, under Subsection (2), that the adult lacks health care decision making capacity, is not in effect if the adult challenges the finding under Subsection (3)(a).
- (e) If an adult does not challenge the finding described in Subsection (2), the health care provider and health care facility may rely on a surrogate, pursuant to the provisions of this chapter, to make health care decisions for the adult.
- (4) A health care provider or health care facility that relies on a surrogate to make decisions on behalf of an adult has an ongoing obligation to consider whether the adult continues to lack health care decision making capacity.
- (5) If at any time a health care provider finds, based on an examination and assessment, that the adult has regained health care decision making capacity, the health care provider shall record the results of the assessment in the adult's medical record, and the adult can direct the adult's own health care.
- (6) A physician assistant may not make a finding described in Subsection (2), unless the physician assistant is permitted to make the finding under the physician assistant's delegation of services agreement, as defined in Section 58-70a-102.

Amended by Chapter 99, 2009 General Session

**75-2a-105 Capacity to complete an advance health care directive.**

- (1) An adult is presumed to have the capacity to complete an advance health care directive.
- (2) An adult who is found to lack health care decision making capacity under the provisions of Section 75-2a-104:
  - (a) lacks the capacity to give an advance health care directive, including Part II of the form created in Section 75-2a-117, or any other substantially similar form expressing a health care preference; and
  - (b) may retain the capacity to appoint an agent and complete Part I of the form created in Section 75-2a-117.
- (3) The following factors shall be considered by a health care provider, attorney, or court when determining whether an adult described in Subsection (2)(b) has retained the capacity to appoint an agent:
  - (a) whether the adult has expressed over time an intent to appoint the same person as agent;
  - (b) whether the choice of agent is consistent with past relationships and patterns of behavior between the adult and the prospective agent, or, if inconsistent, whether there is a reasonable justification for the change; and
  - (c) whether the adult's expression of the intent to appoint the agent occurs at times when, or in settings where, the adult has the greatest ability to make and communicate decisions.

Amended by Chapter 107, 2008 General Session

**75-2a-106 Emergency medical services -- POLST order.**

- (1) A POLST order may be created by or on behalf of a person as described in this section.

- (2) A POLST order shall, in consultation with the person authorized to consent to the order pursuant to this section, be prepared by:
  - (a) the physician, APRN, or, subject to Subsection (11), physician assistant of the person to whom the POLST order relates; or
  - (b) a health care provider who:
    - (i) is acting under the supervision of a person 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) A POLST order shall be signed:
  - (a) personally, by the physician, APRN, or, subject to Subsection (11), physician assistant of the person to whom the POLST order relates; and
  - (b)
    - (i) if the person to whom the POLST order relates is an adult with health care decision making capacity, by:
      - (A) the person; or
      - (B) an adult who is directed by the person to sign the POLST order on behalf of the person;
    - (ii) if the person to whom the POLST order relates is an adult who lacks health care decision making capacity, by:
      - (A) the surrogate with the highest priority under Section 75-2a-111;
      - (B) the majority of the class of surrogates with the highest priority under Section 75-2a-111; or
      - (C) a person directed to sign the POLST order by, and on behalf of, the persons described in Subsection (3)(b)(ii)(A) or (B); or
    - (iii) if the person to whom the POLST order relates is a minor, by a parent or guardian of the minor.
- (4) If a POLST order 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) A POLST order:
  - (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 POLST order was made;
  - (c) may specify the level of life sustaining care to be provided to the person to whom the order relates; and
  - (d) may direct that life sustaining care be withheld or withdrawn from the person to whom the order relates.
- (6) A health care provider or emergency medical service provider, licensed or certified under Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System, is immune from civil or criminal liability, and is not subject to discipline for unprofessional conduct, for:
  - (a) complying with a POLST order in good faith; or
  - (b) providing life sustaining treatment to a person when a POLST order directs that the life sustaining treatment be withheld or withdrawn.
- (7) To the extent that the provisions of a POLST order described in this section conflict with the provisions of an advance health care directive made under Section 75-2a-107, the provisions of the POLST order take precedence.

- (8) An adult, or a parent or guardian of a minor, may revoke a POLST order by:
  - (a) orally informing emergency service personnel;
  - (b) writing "void" across the POLST order form;
  - (c) burning, tearing, or otherwise destroying or defacing:
    - (i) the POLST order form; or
    - (ii) a bracelet or other evidence of the POLST order;
  - (d) asking another adult to take the action described in this Subsection (8) on the person's behalf;
  - (e) signing or directing another adult to sign a written revocation on the person's behalf;
  - (f) stating, in the presence of an adult witness, that the person wishes to revoke the order; or
  - (g) completing a new POLST order.
- (9)
  - (a) Except as provided in Subsection (9)(c), a surrogate for an adult who lacks health care decision making capacity may only revoke a POLST order if the revocation is consistent with the substituted judgment standard.
  - (b) Except as provided in Subsection (9)(c), a surrogate who has authority under this section to sign a POLST order may revoke a POLST order, in accordance with Subsection (9)(a), by:
    - (i) signing a written revocation of the POLST order; or
    - (ii) completing and signing a new POLST order.
  - (c) A surrogate may not revoke a POLST order during the period of time beginning when an emergency service provider is contacted for assistance, and ending when the emergency ends.
- (10)
  - (a) The Department of Health and Human Services shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
    - (i) create the forms and systems described in this section; and
    - (ii) develop uniform instructions for the form established in Section 75-2a-117.
  - (b) The Department of Health and Human Services may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to designate health care professionals, in addition to those described in Subsection (2)(b)(ii), who may prepare a POLST order.
  - (c) The Department of Health and Human Services may assist others with training of health care professionals regarding this chapter.
- (11) A physician assistant may not prepare or sign a POLST order, unless the physician assistant is permitted to prepare or sign the POLST order under the physician assistant's delegation of services agreement, as defined in Section 58-70a-102.
- (12)
  - (a) Notwithstanding any other provision of this section:
    - (i) the provisions of Title 46, Chapter 4, Uniform Electronic Transactions Act, apply to any signature required on the POLST order; and
    - (ii) a verbal confirmation satisfies the requirement for a signature from an individual under Subsection (3)(b)(ii) or (iii), if:
      - (A) requiring the individual described in Subsection (3)(b)(i)(B), (ii), or (iii) to sign the POLST order in person or electronically would require significant difficulty or expense; and
      - (B) a licensed health care provider witnesses the verbal confirmation and signs the POLST order attesting that the health care provider witnessed the verbal confirmation.
  - (b) The health care provider described in Subsection (12)(a)(ii)(B):
    - (i) may not be the same individual who signs the POLST order 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.

Amended by Chapter 330, 2023 General Session

**75-2a-107 Advance health care directive -- Appointment of agent -- Powers of agent -- Health care directions.**

- (1)
- (a) An adult may make an advance health care directive in which the adult may:
    - (i) appoint a health care agent or choose not to appoint a health care agent;
    - (ii) give directions for the care of the adult after the adult loses health care decision making capacity;
    - (iii) choose not to give directions;
    - (iv) state conditions that must be met before life sustaining treatment may be withheld or withdrawn;
    - (v) authorize an agent to consent to the adult's participation in medical research;
    - (vi) nominate a guardian;
    - (vii) authorize an agent to consent to organ donation;
    - (viii) expand or limit the powers of a health care agent; and
    - (ix) designate the agent's access to the adult's medical records.
  - (b) An advance health care directive may be oral or written.
  - (c) An advance health care directive shall be witnessed by a disinterested adult. The witness may not be:
    - (i) the person who signed the directive on behalf of the declarant;
    - (ii) related to the declarant by blood or marriage;
    - (iii) entitled to any portion of the declarant's estate according to the laws of intestate succession of this state or under any will or codicil of the declarant;
    - (iv) the beneficiary of any of the following that are held, owned, made, or established by, or on behalf of, the declarant:
      - (A) a life insurance policy;
      - (B) a trust;
      - (C) a qualified plan;
      - (D) a pay on death account; or
      - (E) a transfer on death deed;
    - (v) entitled to benefit financially upon the death of the declarant;
    - (vi) entitled to a right to, or interest in, real or personal property upon the death of the declarant;
    - (vii) directly financially responsible for the declarant's medical care;
    - (viii) a health care provider who is:
      - (A) providing care to the declarant; or
      - (B) an administrator at a health care facility in which the declarant is receiving care; or
    - (ix) the appointed agent.
  - (d) The witness to an oral advance health care directive shall state the circumstances under which the directive was made.
- (2) An agent appointed under the provisions of this section may not be a health care provider for the declarant, or an owner, operator, or employee of the health care facility at which the declarant is receiving care unless the agent is related to the declarant by blood, marriage, or adoption.

Amended by Chapter 107, 2008 General Session



**75-2a-108 Default surrogates.**

- (1)
  - (a) Any member of the class described in Subsection (1)(b) may act as an adult's surrogate if:
    - (i)
      - (A) the adult has not appointed an agent;
      - (B) an appointed agent is not reasonably available; or
      - (C) a guardian has not been appointed; and
    - (ii) the member of the class described in Subsection (1)(b) is:
      - (A) over 18 years of age;
      - (B) has health care decision making capacity;
      - (C) is reasonably available; and
      - (D) has not been disqualified by the adult or a court.
  - (b) Except as provided in Subsection (1)(a), and subject to Subsection (1)(c), the following classes of the adult's family, in descending order of priority, may act as the adult's surrogate:
    - (i) the adult's spouse, unless the adult is divorced or legally separated; or
    - (ii) the following family members:
      - (A) a child;
      - (B) a parent;
      - (C) a sibling;
      - (D) a grandchild; or
      - (E) a grandparent.
  - (c) A person described in Subsection (1)(b), may not direct an adult's care if a person of a higher priority class is able and willing to act as a surrogate for the adult.
  - (d) A court may disqualify a person described in Subsection (1)(b) from acting as a surrogate if the court finds that the person has acted in a manner that is inconsistent with the position of trust in which a surrogate is placed.
- (2) If the family members designated in Subsection (1)(b) are not reasonably available to act as a surrogate, a person who is 18 years of age or older, other than those designated in Subsection (1) may act as a surrogate if the person:
  - (a) has health care decision making capacity;
  - (b) has exhibited special care and concern for the patient;
  - (c) knows the patient and the patient's personal values; and
  - (d) is reasonably available to act as a surrogate.
- (3) The surrogate shall communicate the surrogate's assumption of authority as promptly as practicable to the members of a class who:
  - (a) have an equal or higher priority and are not acting as surrogate; and
  - (b) can be readily contacted.
- (4) A health care provider shall comply with the decision of a majority of the members of the highest priority class who have communicated their views to the provider if:
  - (a) more than one member of the highest priority class assumes authority to act as default surrogate;
  - (b) the members of the class do not agree on a health care decision; and
  - (c) the health care provider is informed of the disagreement among the members of the class.
- (5)
  - (a) An adult may at any time disqualify a default surrogate, including a member of the adult's family, from acting as the adult's surrogate by:
    - (i) a signed writing;
    - (ii) personally informing a witness of the disqualification; or

- (iii) informing the surrogate of the disqualification.
- (b) Disqualification of a surrogate is effective even if the adult has been found to lack health care decision making capacity.
- (6) If reasonable doubt exists regarding the status of an adult claiming the right to act as a default surrogate, the health care provider may:
  - (a) require the person to provide a sworn statement giving facts and circumstances reasonably sufficient to establish the claimed authority; or
  - (b) seek a ruling from the court under Section 75-2a-120.
- (7) A health care provider may seek a ruling from a court pursuant to Section 75-2a-120 if the health care provider has evidence that a surrogate is making decisions that are inconsistent with an adult patient's wishes or preferences.

Amended by Chapter 107, 2008 General Session

**75-2a-109 Effect of current health care preferences -- When a surrogate may act.**

- (1) An adult with health care decision making capacity retains the right to make health care decisions as long as the adult has health care decision making capacity as defined in Section 75-2a-103. For purposes of this chapter, the inability to communicate through speech does not mean that the adult lacks health care decision making capacity.
- (2) An adult's current health care decisions, however expressed or indicated, always supersede an adult's prior decisions or health care directives.
- (3) Unless otherwise directed in an advance health care directive, an advance health care directive or the authority of a surrogate to make health care decisions on behalf of an adult:
  - (a) is effective only after a physician, physician assistant, or APRN makes a determination of incapacity as provided in Section 75-2a-104;
  - (b) remains in effect during any period of time in which the declarant lacks capacity to make health care decisions; and
  - (c) ceases to be effective when:
    - (i) a declarant disqualifies a surrogate or revokes the advance health care directive;
    - (ii) a health care provider finds that the declarant has health care decision making capacity;
    - (iii) a court issues an order invalidating a health care directive; or
    - (iv) the declarant has challenged the finding of incapacity under the provisions of Subsection 75-2a-104(3).

Amended by Chapter 99, 2009 General Session

**75-2a-110 Surrogate decision making -- Scope of authority.**

- (1) A surrogate acting under the authority of either Section 75-2a-107 or 75-2a-108 shall make health care decisions in accordance with:
  - (a) the adult's current preferences, to the extent possible;
  - (b) the adult's written or oral health care directions, if any; or
  - (c) the substituted judgment standard.
- (2) A surrogate acting under authority of Sections 75-2a-107 and 75-2a-108:
  - (a) may not admit the adult to a licensed health care facility for long-term custodial placement other than for assessment, rehabilitative, or respite care over the objection of the adult; and
  - (b) may make health care decisions, including decisions to terminate life sustaining treatment for the adult patient in accordance with Subsection (1).

- (3) A surrogate acting under authority of this section is not subject to civil or criminal liability or claims of unprofessional conduct for surrogate health care decisions made:
- (a) in accordance with this section; and
  - (b) in good faith.

Amended by Chapter 107, 2008 General Session

**75-2a-111 Priority of decision makers.**

- (1) The following is the order of priority of those authorized to make health care decisions on behalf of an adult who has been found to lack health care decision making capacity under Section 75-2a-104:
- (a) a health care agent appointed by an adult under the provisions of Section 75-2a-107 unless the agent has been disqualified by:
    - (i) the adult; or
    - (ii) a court of law;
  - (b) a court-appointed guardian; or
  - (c) the highest priority default surrogate acting under authority of Section 75-2a-108.
- (2) A health care provider or health care facility obtaining consent for health care from a surrogate shall make a reasonable effort to identify and obtain consent from the surrogate with the highest priority.

Amended by Chapter 107, 2008 General Session

**75-2a-112 Decisions by guardian.**

- (1) A court-appointed guardian shall comply with an adult's advance health care directive and may not revoke the adult's advance health care directive unless the court, for cause, expressly revokes the adult's directive.
- (2) A health care decision of an agent takes precedence over that of a guardian, in the absence of a court order to the contrary.
- (3) Except as provided in Subsections (1) and (2), a health care decision made by a guardian for the adult patient is effective without judicial approval.
- (4) A guardian is not subject to civil or criminal liability or to claims of unprofessional conduct for a surrogate health care decision made:
- (a) in good faith; and
  - (b) in accordance with Section 75-2a-110.

Amended by Chapter 107, 2008 General Session

**75-2a-113 Personal representative status.**

A surrogate becomes a personal representative for an adult under the Health Insurance Portability and Accountability Act of 1996 when:

- (1) the adult has been found to lack health care decision making capacity under Section 75-2a-104;
- (2) the adult grants current authority to the surrogate either:
- (a) in writing; or
  - (b) by other expression before a witness who is not the surrogate or agent; or
- (3) the court appoints a guardian authorized to make health care decisions on behalf of the adult.

Amended by Chapter 107, 2008 General Session

**75-2a-114 Revocation of directive.**

- (1) An advance directive may be revoked at any time by the declarant by:
  - (a) writing "void" across the document;
  - (b) obliterating, burning, tearing, or otherwise destroying or defacing the document in any manner indicating an intent to revoke;
  - (c) instructing another to do one of the acts described in Subsection (1)(a) or (b);
  - (d) a written revocation of the directive signed and dated by:
    - (i) the declarant; or
    - (ii) an adult:
      - (A) signing on behalf of the declarant; and
      - (B) acting at the direction of the declarant; or
  - (e) an oral expression of an intent to revoke the directive in the presence of a witness who is age 18 years or older and who is not:
    - (i) related to the declarant by blood or marriage;
    - (ii) entitled to any portion of the declarant's estate according to the laws of intestate succession of this state or under any will or codicil of the declarant;
    - (iii) the beneficiary of any of the following that are held, owned, made, or established by, or on behalf of, the declarant:
      - (A) a life insurance policy;
      - (B) a trust;
      - (C) a qualified plan;
      - (D) a pay on death account; or
      - (E) a transfer on death deed;
    - (iv) entitled to benefit financially upon the death of the declarant;
    - (v) entitled to a right to, or interest in, real or personal property upon the death of the declarant;
    - (vi) directly financially responsible for the declarant's medical care;
    - (vii) a health care provider who is:
      - (A) providing care to the declarant; or
      - (B) an administrator at a health care facility in which the declarant is receiving care; or
    - (viii) the adult who will become agent or default surrogate after the revocation.
- (2) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes the designation of a spouse as an agent, unless:
  - (a) otherwise specified in the decree; or
  - (b) the declarant has affirmed the intent to retain the agent subsequent to the annulment, divorce, or legal separation.
- (3) An advance health care directive that conflicts with an earlier advance health care directive revokes the earlier directive to the extent of the conflict.

Amended by Chapter 107, 2008 General Session

**75-2a-115 Notification to health care provider -- Obligations of health care providers -- Liability.**

- (1) It is the responsibility of the declarant or surrogate, to the extent that the responsibility is not assigned to a health care provider or health care facility by state or federal law, to notify or provide for notification to a health care provider and a health care facility of:
  - (a) the existence of a health care directive;

- (b) the revocation of a health care directive;
  - (c) the existence or revocation of appointment of an agent or default surrogate;
  - (d) the disqualification of a default surrogate; or
  - (e) the appointment or revocation of appointment of a guardian.
- (2)
- (a) A health care provider or health care facility is not subject to civil or criminal liability or to claims of unprofessional conduct for failing to act upon a health care directive, a revocation of a health care directive, or a disqualification of a surrogate until the health care provider or health care facility has received an oral directive from an adult or a copy of a written directive or revocation of the health care directive, or the disqualification of the surrogate.
  - (b) A health care provider and health care facility that is notified under Subsection (1) shall include in the adult patient's medical record:
    - (i) the health care directive or a copy of it, a revocation of a health care directive, or a disqualification of a surrogate; and
    - (ii) the date, time, and place in which any written or oral notice of the document described in this Subsection (2)(b) is received.
- (3) A health care provider or health care facility acting in good faith and in accordance with generally accepted health care standards is not subject to civil or criminal liability or to discipline for unprofessional conduct for:
- (a) complying with a health care decision made by an adult with health care decision making capacity;
  - (b) complying with a health care decision made by a surrogate apparently having authority to make a health care decision for a person, including a decision to withhold or withdraw health care;
  - (c) declining to comply with a health care decision of a surrogate based on a belief that the surrogate then lacked authority;
  - (d) declining to comply with a health care decision of an adult who lacks decision making capacity;
  - (e) seeking a judicial determination, or requiring a surrogate to obtain a judicial determination, under Section 75-2a-120 of:
    - (i) the validity of a health care directive;
    - (ii) the validity of directions from a surrogate or guardian;
    - (iii) the decision making capacity of an adult who challenges a physician's finding of incapacity;or
  - (iv) the authority of a guardian or surrogate; or
  - (f) complying with an advance health care directive and assuming that the directive was valid when made, and has not been revoked or terminated.
- (4)
- (a) Health care providers and health care facilities shall:
    - (i) cooperate with a person authorized under this chapter to make written directives concerning health care;
    - (ii) unless the provisions of Subsection (4)(b) apply, comply with:
      - (A) a health care decision of an adult; and
      - (B) a health care decision made by the highest ranking surrogate then authorized to make health care decisions for an adult, to the same extent as if the decision had been made by the adult;
    - (iii) before implementing a health care decision made by a surrogate, make a reasonable attempt to communicate to the adult on whose behalf the decision is made:

- (A) the decision made; and
- (B) the identity of the surrogate making the decision.
- (b) A health care provider or health care facility may decline to comply with a health care decision if:
  - (i) in the opinion of the health care provider:
    - (A) the adult who made the decision lacks health care decision making capacity;
    - (B) the surrogate who made the decision lacks health care decision making capacity;
    - (C) the health care provider has evidence that the surrogate's instructions are inconsistent with the adult's health care instructions, or, for a person who has always lacked health care decision making capacity, that the surrogate's instructions are inconsistent with the best interest of the adult; or
    - (D) there is reasonable doubt regarding the status of a person claiming the right to act as a default surrogate, in which case the health care provider shall comply with Subsection 75-2a-108(6); or
  - (ii) the health care provider declines to comply for reasons of conscience.
- (c) A health care provider or health care facility that declines to comply with a health care decision in accordance with Subsection (4)(b) must:
  - (i) promptly inform the adult and any acting surrogate of the reason for refusing to comply with the health care decision;
  - (ii) make a good faith attempt to resolve the conflict; and
  - (iii) provide continuing care to the patient until the issue is resolved or until a transfer can be made to a health care provider or health care facility that will implement the requested instruction or decision.
- (d) A health care provider or health care facility that declines to comply with a health care instruction, after meeting the obligations set forth in Subsection (4)(c) may transfer the adult to a health care provider or health care facility that will carry out the requested health care decisions.
- (e) A health care facility may decline to follow a health care decision for reasons of conscience under Subsection (4)(b)(ii) if:
  - (i) the health care decision is contrary to a policy of the facility that is expressly based on reasons of conscience;
  - (ii) the policy was timely communicated to the adult and an adult's surrogate;
  - (iii) the facility promptly informs the adult, if possible, and any surrogate then authorized to make decisions for the adult;
  - (iv) the facility provides continuing care to the adult until a transfer can be made to a health care facility that will implement the requested instruction or decision; and
  - (v) unless an adult or surrogate then authorized to make health care decisions for the adult refuses assistance, immediately make all reasonable efforts to assist in the transfer of the adult to another health care facility that will carry out the instructions or decisions.
- (5) A health care provider and health care facility:
  - (a) may not require or prohibit the creation or revocation of an advance health care directive as a condition for providing health care; and
  - (b) shall comply with all state and federal laws and regulations governing advance health care directives.

Amended by Chapter 107, 2008 General Session

**75-2a-116 Presumption of validity of directive.**

- (1) A health care directive executed under this chapter is presumed valid and binding.
- (2) Health care providers and health care facilities, in the absence of notice to the contrary, shall presume that a declarant who executed a health care directive, whether or not in the presence of a health care provider, had the required decision making capacity at the time the declarant signed the directive. The fact a declarant executed a health care directive shall not be construed as an indication that the declarant was suffering from mental illness or lacked decision making capacity.

Enacted by Chapter 31, 2007 General Session

**75-2a-117 Optional form.**

- (1) The form created in Subsection (2), or a substantially similar form, is presumed valid under this chapter.
- (2) The following form is presumed valid under Subsection (1):

Utah Advance Health Care Directive  
(Pursuant to Utah Code Section 75-2a-117)

Part I: Allows you to name another person to make health care decisions for you when you cannot make decisions or speak for yourself.

Part II: Allows you to record your wishes about health care in writing.

Part III: Tells you how to revoke or change this directive.

Part IV: Makes your directive legal.

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My Personal Information

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

Birth date: \_\_\_\_\_

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Part I: My Agent (Health Care Power of Attorney)

**A. No Agent**

If you do not want to name an agent: initial the box below, then go to Part II; do not name an agent in B or C below. No one can force you to name an agent.

\_\_\_\_\_ I do not want to choose an agent.

**B. My Agent**

Agent's Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Home Phone: (    ) \_\_\_\_\_ Cell Phone: (    ) \_\_\_\_\_ Work Phone: (    ) \_\_\_\_\_

**C. My Alternate Agent**

This person will serve as your agent if your agent, named above, is unable or unwilling to serve.

Alternate Agent's Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

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City, State, Zip Code:

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Home Phone: (    ) \_\_\_\_\_ Cell Phone: (    ) \_\_\_\_\_ Work Phone: (    ) \_\_\_\_\_

**D. Agent's Authority**

If I cannot make decisions or speak for myself (in other words, after my physician or another authorized provider finds that I lack health care decision making capacity under Section 75-2a-104 of the Advance Health Care Directive Act), my agent has the power to make any health care decision I could have made such as, but not limited to:

- Consent to, refuse, or withdraw any health care. This may include care to prolong my life such as food and fluids by tube, use of antibiotics, CPR (cardiopulmonary resuscitation), and dialysis, and mental health care, such as convulsive therapy and psychoactive medications. This authority is subject to any limits in paragraph F of Part I or in Part II of this directive.
- Hire and fire health care providers.
- Ask questions and get answers from health care providers.
- Consent to admission or transfer to a health care provider or health care facility, including a mental health facility, subject to any limits in paragraphs E and F of Part I.
- Get copies of my medical records.
- Ask for consultations or second opinions.

My agent cannot force health care against my will, even if a physician has found that I lack health care decision making capacity.

**E. Other Authority**

My agent has the powers below ONLY IF I initial the "yes" option that precedes the statement.

I authorize my agent to:

YES \_\_\_\_\_ NO \_\_\_\_\_      Get copies of my medical records at any time, even when I can speak for myself.

YES \_\_\_\_\_ NO \_\_\_\_\_      Admit me to a licensed health care facility, such as a hospital, nursing home, assisted living, or other facility for long-term placement other than convalescent or recuperative care.

**F. Limits/Expansion of Authority**

I wish to limit or expand the powers of my health care agent as follows:

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**G. Nomination of Guardian**

Even though appointing an agent should help you avoid a guardianship, a guardianship may still be necessary. Initial the "YES" option if you want the court to appoint your agent or, if your agent is unable or unwilling to serve, your alternate agent, to serve as your guardian, if a guardianship is ever necessary.

YES \_\_\_\_\_ NO \_\_\_\_\_      I, being of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate my agent, or if my agent is unable or unwilling to serve, I hereby nominate my alternate agent, to serve as my guardian in the event that, after the date of this instrument, I become incapacitated.

**H. Consent to Participate in Medical Research**

YES \_\_\_\_\_ NO \_\_\_\_\_      I authorize my agent to consent to my participation in medical research or clinical trials, even if I may not benefit from the results.

**I. Organ Donation**

YES \_\_\_\_\_ NO \_\_\_\_\_      If I have not otherwise agreed to organ donation, my agent may consent to the donation of my organs for the purpose of organ transplantation.



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### Part II: My Health Care Wishes (Living Will)

I want my health care providers to follow the instructions I give them when I am being treated, even if my instructions conflict with these or other advance directives. My health care providers should always provide health care to keep me as comfortable and functional as possible.

Choose only one of the following options, numbered Option 1 through Option 4, by placing your initials before the numbered statement. Do not initial more than one option. If you do not wish to document end-of-life wishes, initial Option 4. You may choose to draw a line through the options that you are not choosing.

#### Option 1

\_\_\_\_\_ Initial

I choose to let my agent decide. I have chosen my agent carefully. I have talked with my agent about my health care wishes. I trust my agent to make the health care decisions for me that I would make under the circumstances.

Additional Comments:

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#### Option 2

\_\_\_\_\_ Initial

I choose to prolong life. Regardless of my condition or prognosis, I want my health care team to try to prolong my life as long as possible within the limits of generally accepted health care standards.

Other:

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#### Option 3

\_\_\_\_\_ Initial

I choose not to receive care for the purpose of prolonging life, including food and fluids by tube, antibiotics, CPR, or dialysis being used to prolong my life. I always want comfort care and routine medical care that will keep me as comfortable and functional as possible, even if that care may prolong my life.

If you choose this option, you must also choose either (a) or (b), below.

\_\_\_\_\_ Initial

(a) I put no limit on the ability of my health care provider or agent to withhold or withdraw life-sustaining care.

If you selected (a), above, do not choose any options under (b).

\_\_\_\_\_ Initial

(b) My health care provider should withhold or withdraw life-sustaining care if at least one of the following initialed conditions is met:

\_\_\_\_\_ I have a progressive illness that will cause death.

\_\_\_\_\_ I am close to death and am unlikely to recover.

\_\_\_\_\_ I cannot communicate and it is unlikely that my condition will improve.

\_\_\_\_\_ I do not recognize my friends or family and it is unlikely that my condition will improve.

\_\_\_\_\_ I am in a persistent vegetative state.

Other:

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#### Option 4

\_\_\_\_\_ Initial

I do not wish to express preferences about health care wishes in this directive.

Other:

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Additional instructions about your health care wishes:

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If you do not want emergency medical service providers to provide CPR or other life sustaining measures, you must work with a physician or APRN to complete an order that reflects your wishes on a form approved by the Utah Department of Health.

#### Part III: Revoking or Changing a Directive

I may revoke or change this directive by:

1. Writing "void" across the form, or burning, tearing, or otherwise destroying or defacing this document or directing another person to do the same on my behalf;
2. Signing a written revocation of the directive, or directing another person to sign a revocation on my behalf;
3. Stating that I wish to revoke the directive in the presence of a witness who: is 18 years of age or older; will not be appointed as my agent in a substitute directive; will not become a default surrogate if the directive is revoked; and signs and dates a written document confirming my statement; or
4. Signing a new directive. (If you sign more than one Advance Health Care Directive, the most recent one applies.)

#### Part IV: Making My Directive Legal

I sign this directive voluntarily. I understand the choices I have made and declare that I am emotionally and mentally competent to make this directive. My signature on this form revokes any living will or power of attorney form, naming a health care agent, that I have completed in the past.

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Date

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Signature

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City, County, and State of Residence

I have witnessed the signing of this directive, I am 18 years of age or older, and I am not:

1. related to the declarant by blood or marriage;
2. entitled to any portion of the declarant's estate according to the laws of intestate succession of any state or jurisdiction or under any will or codicil of the declarant;
3. a beneficiary of a life insurance policy, trust, qualified plan, pay on death account, or transfer on death deed that is held, owned, made, or established by, or on behalf of, the declarant;
4. entitled to benefit financially upon the death of the declarant;
5. entitled to a right to, or interest in, real or personal property upon the death of the declarant;
6. directly financially responsible for the declarant's medical care;
7. a health care provider who is providing care to the declarant or an administrator at a health care facility in which the declarant is receiving care; or
8. the appointed agent or alternate agent.

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Signature of Witness

---

Printed Name of Witness

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Street Address

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City

---

State

---

Zip Code

If the witness is signing to confirm an oral directive, describe below the circumstances under which the directive was made.

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Amended by Chapter 99, 2009 General Session

**75-2a-118 Illegal destruction or falsification of health care directive.**

- (1) A person is guilty of a class B misdemeanor if the person:
  - (a) willfully conceals, cancels, defaces, obliterates, or damages a health care directive of another without the declarant's consent; or
  - (b) falsifies, forges, or alters a health care directive or a revocation of the health care directive of another person.
- (2) A person is guilty of criminal homicide if:
  - (a) the person:
    - (i) falsifies or forges the health care directive of an adult; or
    - (ii) willfully conceals or withholds personal knowledge of:
      - (A) the existence of a health care directive;
      - (B) the revocation of a health care directive; or
      - (C) the disqualification of a surrogate; and
  - (b) the actions described in Subsection (2)(a) cause a withholding or withdrawal of life sustaining procedures contrary to the wishes of a declarant resulting in the death of the declarant.

Amended by Chapter 107, 2008 General Session

**75-2a-119 Health care directive effect on insurance policies.**

- (1) If an adult makes a health care directive under this chapter, the health care directive does not affect in any manner:
  - (a) the obligation of any life or medical insurance company regarding any policy of life or medical insurance;
  - (b) the sale, procurement, or issuance of any policy of life or health insurance; or
  - (c) the terms of any existing policy.
- (2)
  - (a) Notwithstanding any terms of an insurance policy to the contrary, an insurance policy is not legally impaired or invalidated in any manner by:
    - (i) withholding or withdrawing life sustaining procedures; or
    - (ii) following directions in a health care directive executed as provided in this chapter.
  - (b) Following health care instructions in a health care directive does not constitute legal cause for failing to pay life or health insurance benefits. Death that occurs after following the instructions of an advance health care directive or a surrogate's instructions does not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit.
- (3)
  - (a) The following may not require an adult to execute a directive or to make any particular choices or entries in a directive under this chapter as a condition for being insured for or receiving health care or life insurance contract services:
    - (i) a health care provider;
    - (ii) a health care facility;

- (iii) a health maintenance organization;
  - (iv) an insurer issuing disability, health, or life insurance;
  - (v) a self-insured employee welfare or benefit plan;
  - (vi) a nonprofit medical service corporation or mutual nonprofit hospital service corporation; or
  - (vii) any other person, firm, or entity.
- (b) Nothing in this chapter:
- (i) may be construed to require an insurer to insure risks otherwise considered by the insurer as not a covered risk;
  - (ii) is intended to impair or supersede any other legal right or legal responsibility which an adult may have to effect the withholding or withdrawal of life sustaining procedures in any lawful manner; or
  - (iii) creates any presumption concerning the intention of an adult who has not executed a health care directive.

Amended by Chapter 107, 2008 General Session

**75-2a-120 Judicial relief.**

A district court may enjoin or direct a health care decision, or order other equitable relief based on a petition filed by:

- (1) a patient;
- (2) an agent of a patient;
- (3) a guardian of a patient;
- (4) a default surrogate of a patient;
- (5) a health care provider of a patient;
- (6) a health care facility providing care for a patient; or
- (7) an individual who meets the requirements of Section 75-2a-108.

Enacted by Chapter 31, 2007 General Session

**75-2a-121 Reciprocity -- Application of former provisions of law.**

Unless otherwise provided in the health care directive:

- (1) a health care provider or health care facility may, in good faith, rely on any health care directive, power of attorney, or similar instrument:
  - (a) executed in another state; or
  - (b) executed prior to January 1, 2008, in this state under the provisions of Chapter 2, Part 11, Personal Choice and Living Will Act;
- (2) a health care directive executed under the provisions of this chapter shall be governed pursuant to the provisions of this chapter that were in effect at that time, unless it appears from the directive that the declarant intended the current provisions of this chapter to apply; and
- (3) the health care directive described in Subsection (1) is presumed to comply with the requirements of this chapter.

Amended by Chapter 107, 2008 General Session

**75-2a-122 Effect of act.**

The Advance Health Care Directive Act created in this chapter does not:

- (1) create a presumption concerning the intention of an adult who has not made or who has revoked an advance health care directive;

- (2) authorize mercy killing, assisted suicide, or euthanasia; or
- (3) authorize the provision, withholding, or withdrawal of health care, to the extent prohibited by the laws of this state.

Amended by Chapter 107, 2008 General Session

**75-2a-123 Pregnancy.**

- (1) A health care directive that provides for the withholding or withdrawal of life sustaining procedures has no force during the course of a declarant's pregnancy.
- (2) Subsection (1) does not negate the appointment of a health care agent during the course of a declarant's pregnancy.

Amended by Chapter 107, 2008 General Session

**75-2a-124 Provisions cumulative with existing law.**

The provisions of this chapter are cumulative with existing law regarding a person's right to consent or refuse to consent to medical treatment and do not impair any existing rights or responsibilities that a health care provider, a person, including a minor or incapacitated person, or a person's family or surrogate may have in regard to the provision, withholding or withdrawal of life sustaining procedures under the common law or statutes of the state.

Amended by Chapter 107, 2008 General Session

**75-2a-125 Severability.**

If any one or more provision, section, subsection, sentence, clause, phrase, or word of this chapter, or the application of this chapter to any person or circumstance, is found to be unconstitutional, the same is hereby declared to be severable and the balance of this chapter shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares that it would have passed this chapter, and each provision, section, subsection, sentence, clause, phrase, or word of this chapter, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Enacted by Chapter 107, 2008 General Session