

Effective 9/1/2024

**Part 1
General Provisions**

75A-3-101 Definitions for chapter.

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 an order for life sustaining treatment.
- (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; and
 - (c) 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 individual resulting from a treatment outweigh the burdens to the individual resulting from the treatment, taking into account:
 - (a) the effect of the treatment on the physical, emotional, and cognitive functions of the individual;
 - (b) the degree of physical pain or discomfort caused to the individual by the treatment or the withholding or withdrawal of treatment;
 - (c) the degree to which the individual's medical condition, the treatment, or the withholding or withdrawal of treatment, result in a severe and continuing impairment of the dignity of the individual by subjecting the individual to humiliation and dependency;
 - (d) the effect of the treatment on the life expectancy of the individual;
 - (e) the prognosis of the individual 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 individual 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 individual as agent.
- (7) "Child" means the same as that term is defined in Section 75-1-201.
- (8) "Declarant" means an adult who has completed and signed or directed the signing of an advance health care directive.
- (9) "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.
- (10) "Emergency medical services provider" means a person that is licensed, designated, or certified under Title 53, Chapter 2d, Emergency Medical Services Act.
- (11) "Estate" means the same as that term is defined in Section 75-1-201.
- (12) "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 75A-3-303; 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.
- (13) "Guardian" means the same as that term is defined in Section 75-1-201.
- (14) "Health care" means any care, treatment, service, or procedure to improve, maintain, diagnose, or otherwise affect an individual's physical or mental condition.
- (15) "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.
- (16) "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.
- (17) "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.
- (18) "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.
- (19) "Incapacitated" means the same as that term is defined in Section 75-1-201.
- (20) "Incapacity" means the same as that term is defined in Section 75-1-201.
- (21)

- (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.
- (22) "Minor" means an individual who:
- (a) is under 18 years old; and
 - (b) is not an emancipated minor.
- (23) "Order for life sustaining treatment" means an order related to life sustaining treatment, on a form designated by the Department of Health and Human Services under Section 75-3-106, 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.
- (24) "Parent" means the same as that term is defined in Section 75-1-201.
- (25) "Personal representative" means the same as that term is defined in Section 75-1-201.
- (26) "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.
- (27) "Physician assistant" means an individual licensed as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act.
- (28) "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.
- (29) "State" means the same as that term is defined in Section 75-1-201.
- (30) "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 (30)(a) through (c) are unknown, the best interest of the adult.
- (31) "Surrogate" means a health care decision maker who is:
- (a) an appointed agent;
 - (b) a default surrogate under the provisions of Section 75A-3-203; or
 - (c) a guardian.
- (32) "Trust" means the same as that term is defined in Section 75-1-201.
- (33) "Will" means the same as that term is defined in Section 75-1-201.

Renumbered and Amended by Chapter 364, 2024 General Session

75A-3-102 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.

Renumbered and Amended by Chapter 364, 2024 General Session

75A-3-103 Effect of chapter.

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.

Renumbered and Amended by Chapter 364, 2024 General Session

75A-3-104 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.

Renumbered and Amended by Chapter 364, 2024 General Session

75A-3-105 Severability.

- (1) 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.
- (2) 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.

Renumbered and Amended by Chapter 364, 2024 General Session

75a-3-106 Emergency medical services -- Order for life sustaining treatment.

- (1) An order for life sustaining treatment may be created by or on behalf of an individual as 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;
 - (B) the majority of the class of surrogates with the highest priority under Section 75A-3-206; 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, 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 care decision making capacity may only revoke an order for life sustaining treatment 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 an order for life sustaining treatment may revoke an order for life sustaining treatment, in accordance with Subsection (9)(a), by:
 - (i) signing a written revocation of the order for life sustaining treatment; or
 - (ii) completing and signing a new order for life sustaining treatment.
 - (c) A surrogate may not revoke an order for life sustaining treatment 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 75A-3-303.

- (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 an order for life sustaining treatment.
 - (c) The Department of Health and Human Services may assist others with training of health care professionals regarding this chapter.
- (11)
- (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 order for life sustaining treatment; 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 order for life sustaining treatment in person or electronically would require significant difficulty or expense; and
 - (B) a licensed health care provider witnesses the verbal confirmation and signs the order for life sustaining treatment attesting that the health care provider witnessed the verbal confirmation.
 - (b) The health care provider described in Subsection (11)(a)(ii)(B):
 - (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.

75A-3-107 Judicial relief.

A 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 75A-3-203.

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