

Effective 9/1/2024

Part 3
Advance Health Care Directive for Adult

75A-3-301 Advance health care directive -- Appointment of agent -- Powers of agent.

- (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 - (iv) state conditions that must be met before life sustaining treatment may be withheld or withdrawn;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.

Renumbered and Amended by Chapter 364, 2024 General Session

75A-3-302 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 75A-3-201:
 - (a) lacks the capacity to give an advance health care directive, including Part II of the form created in Section 75A-3-303, 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 75A-3-303.
- (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.

Renumbered and Amended by Chapter 364, 2024 General Session

75A-3-303 Optional form for advance health care directive.

- (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 75A-3-303)

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.

My Personal Information

Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone: _____ Cell Phone: _____

Birth date: _____

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:

City, State, Zip Code:

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 75A-3-201 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:

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.

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:

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:

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:

Option 4

_____ Initial

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

Other:

Additional instructions about your health care wishes:

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

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.

Date

Signature

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.

Signature of Witness

Printed Name of Witness

Street Address

City

State

Zip Code

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

Renumbered and Amended by Chapter 364, 2024 General Session

75A-3-304 Presumption of validity of advance health care directive.

- (1) An advance health care directive executed under this chapter is presumed valid and binding.
- (2) A health care provider and a health care facility, in the absence of notice to the contrary, shall presume that a declarant who executed an advance 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.
- (3) The fact that a declarant executed an advance health care directive shall not be construed as an indication that the declarant was suffering from mental illness or lacked decision making capacity.

Renumbered and Amended by Chapter 364, 2024 General Session

75A-3-305 Advance health care directive effect on insurance policies.

- (1) If an adult makes an advance health care directive under this chapter, the advance 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 an advance health care directive executed as provided in this chapter.
 - (b) Following health care instructions in an advance health care directive does not constitute legal cause for failing to pay life or health insurance benefits.

- (c) 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 an advance health care directive or to make any particular choices or entries in an advance health care 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 an advance health care directive.

Renumbered and Amended by Chapter 364, 2024 General Session

75A-3-306 Advance health care directive effect during pregnancy.

- (1) An advance 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.

Renumbered and Amended by Chapter 364, 2024 General Session

75A-3-307 Revocation of advance health care directive.

- (1) An advance health care 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 old 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.

Renumbered and Amended by Chapter 364, 2024 General Session

75A-3-308 Illegal destruction or falsification of advance health care directive.

- (1) A person is guilty of a class B misdemeanor if the person:
- (a) willfully conceals, cancels, defaces, obliterates, or damages an advance 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 advance health care directive of another person.
- (2) A person is guilty of criminal homicide if:
- (a) the person:
 - (i) falsifies or forges the advance health care directive of an adult; or
 - (ii) willfully conceals or withholds personal knowledge of:
 - (A) the existence of an advance health care directive;
 - (B) the revocation of an advance 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.

Renumbered and Amended by Chapter 364, 2024 General Session

75A-3-309 Reciprocity of advance health care directive -- Application of former provisions of law.

Unless otherwise provided in the advance health care directive:

- (1) a health care provider or health care facility may, in good faith, rely on any advance 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;
- (2) an advance 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 advance health care directive described in Subsection (1) is presumed to comply with the requirements of this chapter.

Renumbered and Amended by Chapter 364, 2024 General Session