

ADVANCED HEALTH CARE DIRECTIVE ACT

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Allen M. Christensen

House Sponsor: _____

LONG TITLE

General Description:

This bill repeals the Personal Choice and Living Will Act and enacts the Advanced Health Care Directive Act.

Highlighted Provisions:

This bill:

- ▶ establishes legislative intent;
- ▶ defines terms;
- ▶ gives preference to current health care decisions;
- ▶ creates a presumption that an individual has capacity to make health care decisions

and appoint an agent;

▶ establishes:

- powers of a health care agent;
- surrogate decision makers when an agent is not available;
- scope of surrogate powers;
- priority of decision makers; and
- powers of court-appointed guardians;

▶ coordinates the role of agents and surrogates as personal representatives of an individual;

- ▶ provides for the revocation of a health care directive;
- ▶ requires notice to health care providers of a health care directive or the appointment



28 of an agent;

29 ▶ establishes the duties of a health care provider and a health care facility regarding
30 implementing a health care directive;

31 ▶ creates a presumption of validity of health care directives;

32 ▶ creates a presumptive statutory form for health care directives;

33 ▶ prohibits the illegal destruction or forgery of a health care directive;

34 ▶ prohibits a life or health insurer from:

35 • denying benefits under a policy because an individual signed a health insurance

36 directive which authorizes the withdrawal of life support; or

37 • requiring an individual to create a health care directive in order to be insured;

38 and

39 ▶ provides for reciprocity for health care directives or similar documents from other
40 states.

41 **Monies Appropriated in this Bill:**

42 None

43 **Other Special Clauses:**

44 This bill takes effect on January 1, 2008.

45 **Utah Code Sections Affected:**

46 AMENDS:

47 **62A-3-301**, as last amended by Chapter 131, Laws of Utah 2003

48 **76-5-111**, as last amended by Chapter 108, Laws of Utah 2002

49 ENACTS:

50 **75-2a-1101**, Utah Code Annotated 1953

51 **75-2a-1102**, Utah Code Annotated 1953

52 **75-2a-1103**, Utah Code Annotated 1953

53 **75-2a-1104**, Utah Code Annotated 1953

54 **75-2a-1105**, Utah Code Annotated 1953

55 **75-2a-1105.5**, Utah Code Annotated 1953

56 **75-2a-1106**, Utah Code Annotated 1953

57 **75-2a-1107**, Utah Code Annotated 1953

58 **75-2a-1108**, Utah Code Annotated 1953

- 59 **75-2a-1109**, Utah Code Annotated 1953
- 60 **75-2a-1110**, Utah Code Annotated 1953
- 61 **75-2a-1111**, Utah Code Annotated 1953
- 62 **75-2a-1112**, Utah Code Annotated 1953
- 63 **75-2a-1113**, Utah Code Annotated 1953
- 64 **75-2a-1114**, Utah Code Annotated 1953
- 65 **75-2a-1115**, Utah Code Annotated 1953
- 66 **75-2a-1116**, Utah Code Annotated 1953
- 67 **75-2a-1117**, Utah Code Annotated 1953
- 68 **75-2a-1118**, Utah Code Annotated 1953
- 69 **75-2a-1119**, Utah Code Annotated 1953
- 70 **75-2a-1120**, Utah Code Annotated 1953
- 71 **75-2a-1121**, Utah Code Annotated 1953
- 72 **75-2a-1122**, Utah Code Annotated 1953
- 73 **75-2a-1123**, Utah Code Annotated 1953
- 74 REPEALS:
- 75 **75-2-1101**, as enacted by Chapter 173, Laws of Utah 1985
- 76 **75-2-1102**, as last amended by Chapter 129, Laws of Utah 1993
- 77 **75-2-1103**, as last amended by Chapter 129, Laws of Utah 1993
- 78 **75-2-1104**, as last amended by Chapter 129, Laws of Utah 1993
- 79 **75-2-1105**, as last amended by Chapter 129, Laws of Utah 1993
- 80 **75-2-1105.5**, as last amended by Chapter 141, Laws of Utah 1999
- 81 **75-2-1106**, as last amended by Chapter 129, Laws of Utah 1993
- 82 **75-2-1107**, as last amended by Chapter 129, Laws of Utah 1993
- 83 **75-2-1108**, as enacted by Chapter 173, Laws of Utah 1985
- 84 **75-2-1109**, as enacted by Chapter 173, Laws of Utah 1985
- 85 **75-2-1110**, as enacted by Chapter 173, Laws of Utah 1985
- 86 **75-2-1111**, as enacted by Chapter 173, Laws of Utah 1985
- 87 **75-2-1112**, as enacted by Chapter 173, Laws of Utah 1985
- 88 **75-2-1113**, as enacted by Chapter 173, Laws of Utah 1985
- 89 **75-2-1114**, as enacted by Chapter 173, Laws of Utah 1985

- 90 75-2-1115, as last amended by Chapter 241, Laws of Utah 1991
- 91 75-2-1116, as enacted by Chapter 173, Laws of Utah 1985
- 92 75-2-1117, as enacted by Chapter 173, Laws of Utah 1985
- 93 75-2-1118, as enacted by Chapter 173, Laws of Utah 1985
- 94 75-2-1119, as enacted by Chapter 129, Laws of Utah 1993

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

97 Section 1. Section **62A-3-301** is amended to read:

98 **62A-3-301. Definitions.**

99 As used in this part:

100 (1) "Abandonment" means any knowing or intentional action or inaction, including
 101 desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the
 102 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or
 103 medical or other health care.

104 (2) "Abuse" means:

105 (a) attempting to cause harm, intentionally or knowingly causing harm, or intentionally
 106 or knowingly placing another in fear of imminent harm;

107 (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that
 108 causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's
 109 orders or used as an unauthorized substitute for treatment, unless that conduct furthers the
 110 health and safety of the adult;

111 (c) emotional or psychological abuse;

112 (d) sexual offense as described in Title 76, Chapter 5, Offenses Against the Person; or

113 (e) deprivation of life sustaining treatment, except:

114 (i) as provided in Title 75, Chapter [2] 2a, Part 11, [~~Personal Choice and Living Will~~]
 115 Advanced Health Care Directive Act; or

116 (ii) when informed consent, as defined in Section 76-5-111, has been obtained.

117 (3) "Adult" means a person who is 18 years of age or older.

118 (4) "Adult protection case file" means documents and information contained in the file
 119 maintained by Adult Protective Services on a particular case, including any report or other
 120 notification received by the division or Adult Protective Services.

121 (5) "Adult Protective Services" means the unit within the division responsible to
122 investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate
123 protective services.

124 (6) "Caretaker" means any person, entity, corporation, or public institution that
125 assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing,
126 supervision, medical or other health care, or other necessities. "Caretaker" includes a relative
127 by blood or marriage, a household member, a person who is employed or who provides
128 volunteer work, or a person who contracts or is under court order to provide care.

129 (7) "Counsel" means an attorney licensed to practice law in this state.

130 (8) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

131 (9) "Elder adult" means a person 65 years of age or older.

132 (10) "Emergency" means a circumstance in which a vulnerable adult is at an immediate
133 risk of death or serious physical injury or is at risk of immediate, serious harm. Risk of
134 immediate, serious harm includes exploitation that results in the inability of a vulnerable adult
135 to provide funds for immediate needs, including food, shelter, and necessary medical care.

136 (11) "Emotional or psychological abuse" means intentional or knowing verbal or
137 nonverbal conduct directed at a vulnerable adult including ridiculing, intimidating, yelling,
138 swearing, threatening, isolating, coercing, harassing, or other forms of intimidating behavior
139 that results or could result in the vulnerable adult suffering mental anguish or emotional
140 distress, including fear, humiliation, degradation, agitation, confusion, or isolation.

141 (12) "Exploitation" means the offense described in Subsection 76-5-111(4).

142 (13) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
143 psychological damage, physical injury, serious physical injury, suffering, or distress inflicted
144 knowingly or intentionally.

145 (14) "Intimidation" means communication through verbal or nonverbal conduct which
146 threatens deprivation of money, food, clothing, medicine, shelter, social interaction,
147 supervision, health care, or companionship, or which threatens isolation or abuse.

148 (15) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult
149 from having contact with another person by:

150 (i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,
151 contrary to the express wishes of the vulnerable adult, including communicating to a visitor

152 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,
153 knowing that communication to be false;

154 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult
155 from meeting with a visitor; or

156 (iii) making false or misleading statements to the vulnerable adult in order to induce
157 the vulnerable adult to refuse to receive communication from visitors or other family members.

158 (b) The term "isolation" does not include an act intended to protect the physical or
159 mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or
160 instructions of a physician or other professional advisor of the vulnerable adult.

161 (16) "Lacks capacity to consent" has the meaning as provided in Section 76-5-111.

162 (17) "Neglect" means:

163 (a) (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal
164 care, or dental, medical, or other health care; or

165 (ii) failure to provide protection from health and safety hazards or maltreatment;

166 (b) failure of a caretaker to provide care to a vulnerable adult in a timely manner and
167 with the degree of care that a reasonable person in a like position would exercise;

168 (c) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent,
169 resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or
170 other services necessary to maintain the vulnerable adult's well being;

171 (d) knowing or intentional failure by a caretaker to carry out a prescribed treatment
172 plan that causes or is likely to cause harm to the vulnerable adult;

173 (e) self-neglect by the vulnerable adult; or

174 (f) abandonment by a caretaker.

175 (18) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic
176 conduct, to the extent that the tissue must undergo a healing process in order to be restored to a
177 sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot
178 be restored to a sound and healthy condition. "Physical injury" includes skin bruising, a
179 dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding,
180 malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling,
181 injury to any internal organ, or any other physical condition that imperils the health or welfare
182 of a vulnerable adult and is not a serious physical injury as defined in this section.

183 (19) "Protected person" means a vulnerable adult for whom the court has ordered
184 protective services, including a vulnerable adult for whom emergency protective services have
185 been established under the provisions of this chapter.

186 (20) "Protective services" means any services provided by Adult Protective Services to
187 a vulnerable adult, either with the consent of the vulnerable adult or the vulnerable adult's
188 guardian or conservator, or by court order, if that adult has been abused, neglected, exploited,
189 or is in a state of self-neglect; protective services may include:

190 (a) an intake system for receiving and screening reports;

191 (b) investigation of referrals in accordance with statutory and policy guidelines;

192 (c) protective needs assessment;

193 (d) coordination and referral to community resources for services; or

194 (e) short-term, limited services including emergency shelter or respite when family or
195 other community resources are not available to provide protection.

196 (21) "Self-neglect" means the failure of a vulnerable adult to provide food, water,
197 medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain
198 the vulnerable adult's well being when that failure is the result of the adult's mental or physical
199 impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of
200 self-neglect.

201 (22) "Serious physical injury" has the meaning as provided in Section 76-5-111.

202 (23) "Substantiated" or "substantiation" means a finding, based upon a preponderance
203 of the evidence, that there is a reasonable basis to conclude that abuse, neglect, or exploitation
204 occurred, regardless of whether there is an identified perpetrator or current need for protective
205 services. If more than one allegation is made or identified during the course of the
206 investigation, any allegation determined to meet the criteria for substantiation requires a case
207 finding of "substantiated."

208 (24) "Undue influence" occurs when a person uses the person's role, relationship, or
209 power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear
210 of a vulnerable adult, or uses the person's role, relationship, or power to gain control
211 deceptively over the decision making of the vulnerable adult.

212 (25) "Unsubstantiated" means a finding, based upon a preponderance of the evidence,
213 that there is insufficient evidence to conclude that abuse, neglect, or exploitation occurred.

214 (26) "Vulnerable adult" means an elder adult, or an adult who has a mental or physical
215 impairment which substantially affects that person's ability to:

- 216 (a) provide personal protection;
- 217 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 218 (c) obtain services necessary for health, safety, or welfare;
- 219 (d) carry out the activities of daily living;
- 220 (e) manage the adult's own resources; or
- 221 (f) comprehend the nature and consequences of remaining in a situation of abuse,
222 neglect, or exploitation.

223 Section 2. Section **75-2a-1101** is enacted to read:

224 **Part 11. Advanced Health Care Directive Act**

225 **75-2a-1101. Title.**

226 This part is known as the "Advanced Health Care Directive Act."

227 Section 3. Section **75-2a-1102** is enacted to read:

228 **75-2a-1102. Intent statement.**

229 (1) The Legislature finds:

230 (a) developments in health care technology make possible many alternatives for
231 treating medical conditions and make possible the unnatural prolongation of death;

232 (b) individuals should have the clear legal choice to:

233 (i) accept or reject health care, even if rejecting health care will result in death sooner
234 than death would be expected to occur if rejected health care were started or continued;

235 (ii) be spared unwanted procedures; and

236 (iii) be permitted to die with a maximum of dignity and function and a minimum of
237 pain;

238 (c) Utah law should:

239 (i) provide individuals with a legal tool to designate a health care agent and express
240 preferences about health care options to go into effect only after the individual loses the ability
241 to make or communicate health care decisions, including decisions about end-of-life care; and

242 (ii) promote a health care directive system that can be administered effectively within
243 the health care system;

244 (d) surrogate decisions made on behalf of a person who previously had capacity to

245 make health care decisions, but who has lost health care decision making capacity should be
246 based on:

247 (i) input from the incapacitated person, to the extent possible under the circumstances;

248 (ii) specific preferences expressed by the individual prior to the loss of health care

249 decision making capacity;

250 (iii) the surrogate's understanding of the individual's health care preferences; and

251 (iv) the surrogate's understanding of what the individual would have wanted under the
252 circumstances; and

253 (e) surrogate decisions made on behalf of an individual who has never had health care
254 decision making capacity should be made on the basis of the individual's best interest.

255 (2) In recognition of the dignity and privacy that all individuals are entitled to expect,
256 and to protect the right of an individual to refuse to be treated without the individual's consent,
257 the Legislature declares that this state recognizes the right to make binding health care
258 directives directing health care providers to:

259 (a) provide life sustaining or life supporting medically indicated health care;

260 (b) withhold or withdraw health care; or

261 (c) provide health care only to the extent set forth in a health care directive.

262 Section 4. Section **75-2a-1103** is enacted to read:

263 **75-2a-1103. Definitions.**

264 As used in this part:

265 (1) "Agent" means a person designated in an advanced health care directive to make
266 health care decisions for the declarant.

267 (2) "Best interest" means that the benefits to the individual resulting from a treatment
268 outweigh the burdens to the individual resulting from the treatment, taking into account:

269 (a) the effect of the treatment on the physical, emotional, and cognitive functions of the
270 individual;

271 (b) the degree of physical pain or discomfort caused to the individual by the treatment
272 or the withholding or withdrawal of treatment;

273 (c) the degree to which the individual's medical condition, the treatment, or the
274 withholding or withdrawal of treatment, result in a severe and continuing impairment of the
275 dignity of the individual by subjecting the individual to extreme humiliation and dependency;

- 276 (d) the effect of the treatment on the life expectancy of the individual;
- 277 (e) the prognosis of the individual for recovery with and without the treatment;
- 278 (f) the risks, side effects, and benefits of the treatment, or the withholding or
- 279 withdrawal of treatment; and
- 280 (g) the religious beliefs and basic values of the individual receiving treatment, to the
- 281 extent these may assist the decision maker in determining the best interest.
- 282 (3) "Capacity to appoint an agent" means that the individual understands the
- 283 consequences of appointing a particular person as agent.
- 284 (4) "Declarant" means an individual who has signed or directed the signing of a health
- 285 care directive.
- 286 (5) "Default surrogate decision maker" means the person who may make decisions for
- 287 an individual when either:
- 288 (a) an agent has not been appointed; or
- 289 (b) an agent is not able or available to make decisions for a declarant.
- 290 (6) "Generally accepted health care standards":
- 291 (a) is defined only for the purpose of:
- 292 (i) this part and does not define the standard of care for any other purpose under Utah
- 293 law; and
- 294 (ii) enabling health care providers to interpret the statutory form set forth in Section
- 295 75-2a-1116; and
- 296 (b) means the standard of care that justifies a provider in declining to provide life
- 297 sustaining or life supporting care because the proposed life sustaining care:
- 298 (i) will not prevent or reduce the deterioration in the health or functional status of an
- 299 individual;
- 300 (ii) will not prevent the impending death of an individual; or
- 301 (iii) will impose more burden on the individual than any expected benefit to the
- 302 individual.
- 303 (7) "Guardian" means a court-appointed guardian.
- 304 (8) "Health care" means any care, treatment, service, or procedure to improve,
- 305 maintain, diagnose, or otherwise affect an individual's physical or mental condition.
- 306 (9) "Health care decision":

307 (a) means a decision about an individual's health care made by an individual or the
308 individual's surrogate, that is communicated to a health care provider;

309 (b) includes:

310 (i) selection and discharge of a health care provider and a health care facility;

311 (ii) approval or disapproval of diagnostic tests, surgical procedures, programs of
312 medication, and orders not to resuscitate; and

313 (iii) directions to provide, withhold, or withdraw artificial nutrition and hydration and
314 all other forms of health care; and

315 (c) does not include decisions about the individual's financial affairs or social
316 interactions other than as indirectly affected by the health care decision.

317 (10) "Health care decision making capacity" means an individual's ability to make an
318 informed decision about receiving or refusing health care, including:

319 (a) the ability to understand the nature, extent, or probable consequences of the health
320 care;

321 (b) the ability to make a rational evaluation of the burdens, risks, benefits, and
322 alternatives to the proposed health care; and

323 (c) the ability to communicate a decision.

324 (11) "Health care directive":

325 (a) includes:

326 (i) a designation of an agent to make health care decisions for an individual when the
327 individual cannot make or communicate health care decisions; or

328 (ii) an expression of preferences about health care decisions; and

329 (b) may take one of the following forms:

330 (i) a written document, voluntarily executed by an individual in accordance with the
331 requirements of this part; or

332 (ii) a witnessed oral statement, made by an individual, in accordance with the
333 requirements of this part.

334 (12) "Health care facility" means:

335 (a) a health care facility as defined in Title 26, Chapter 21, Health Care Facility
336 Licensing and Inspection Act; and

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

338 provide health care under Title 58, Occupations and Professions.

339 (13) "Health care provider" is defined in Section 78-14-3.

340 (14) "Individual":

341 (a) means:

342 (i) a person 18 years of age or older; or

343 (ii) an emancipated minor as defined in Sections 78-3a-1001 to 78-3a-1105; and

344 (b) includes:

345 (i) a declarant; and

346 (ii) a person who has not completed an advanced health care directive.

347 (15) "Reasonably available" means:

348 (a) readily able to be contacted without undue effort; and

349 (b) willing and able to act in a timely manner considering the urgency of the

350 individual's health care needs.

351 (16) "Surrogate" means a decision maker who is:

352 (a) an appointed agent;

353 (b) a default surrogate decision maker under the provisions of Section 75-2a-1107; or

354 (c) a court-appointed guardian.

355 Section 5. Section **75-2a-1104** is enacted to read:

356 **75-2a-1104. Capacity to make health care decisions -- Presumption -- Overcoming**
357 **presumption.**

358 (1) An individual is presumed to have:

359 (a) health care decision making capacity; and

360 (b) capacity to make or revoke a health care directive.

361 (2) To overcome the presumption of capacity, a physician who has personally

362 examined the individual and assessed the individual's health care decision making capacity
363 must:

364 (a) find that the individual lacks health care decision making capacity;

365 (b) record the finding in the individual's medical chart including an indication of
366 whether the individual is likely to regain health care decision making capacity; and

367 (c) make a reasonable effort to communicate the determination to:

368 (i) the individual;

369 (ii) other health care providers or health care facilities that the physician would
370 routinely inform of such a finding; and

371 (iii) if the individual has a surrogate, any known surrogate.

372 (3) (a) If the health care provider finds that an individual lacks health care decision
373 making capacity in accordance with Subsection (2), the individual may at any time, challenge
374 the finding by:

375 (i) submitting a written notice of the challenge to the health care provider; or

376 (ii) orally informing the health care provider of the challenge.

377 (b) A health care provider who is informed of a challenge pursuant to Subsection (3)(a)
378 shall promptly inform an individual, if any, who is serving as surrogate of the individual's
379 challenge.

380 (c) A surrogate informed of a challenge to a finding under this section, or the
381 individual if no surrogate is acting on the individual's behalf, shall inform the following of the
382 individual's challenge:

383 (i) any other health care providers involved in the individual's care; and

384 (ii) the health care facility, if any, in which the individual is receiving care.

385 (d) An individual's challenge to a finding under this section is binding on a health care
386 provider and a health care facility unless otherwise ordered by a court.

387 (e) If an individual does not challenge a finding, the health care provider and health
388 care facility may rely on a surrogate to make health care decisions for the individual.

389 (4) A health care professional or health care facility providing care to the individual
390 that relies on a surrogate to make decisions on behalf of an individual has an ongoing
391 obligation to consider whether the individual continues to lack health care decision making
392 capacity.

393 (5) If at any time a health care provider finds, based on an examination and assessment,
394 that the individual has regained health care decision making capacity, the health care provider
395 shall record the results of the assessment in the individual's medical record, and the individual
396 can direct his health care.

397 Section 6. Section **75-2a-1105** is enacted to read:

398 **75-2a-1105. Capacity to appoint an agent.**

399 (1) An individual is presumed to have the capacity to complete an advanced health care

400 directive.

401 (2) An individual who is found to lack health care decision making capacity under the
402 provisions of Section 75-2a-1104:

403 (a) lacks the capacity to give an advanced health care directive, including Part II of the
404 form created in Section 75-2a-116, or any other substantially similar form expressing a health
405 care preference; and

406 (b) may retain the capacity to appoint an agent and complete Part I of the form created
407 in Section 75-2a-116.

408 (3) The following factors shall be considered by a health care provider, attorney, or
409 court when determining whether an individual described in Subsection (2)(b) has retained the
410 capacity to appoint an agent:

411 (a) whether the individual has expressed over time an intent to appoint the same person
412 as agent;

413 (b) whether the choice of agent is consistent with past relationships and patterns of
414 behavior between the individual and the prospective agent, or, if inconsistent, whether there is
415 a reasonable justification for the change; and

416 (c) whether the individual's expression of the intent to appoint the agent occurs at times
417 when, or in settings where, the individual has the greatest ability to make and communicate
418 decisions.

419 Section 7. Section **75-2a-1105.5** is enacted to read:

420 **75-2a-1105.5. Emergency medical services -- Physician order to withhold life**
421 **sustaining procedures.**

422 (1) (a) The following persons may direct an emergency medical service provider
423 licensed or certified under Title 26, Chapter 8a, Utah Emergency Medical Services System Act,
424 who responds to a call to provide emergency medical services as defined in Section 26-8a-102,
425 to withhold all life sustaining procedures:

426 (i) an individual over the age of 18;

427 (ii) an emancipated minor; or

428 (iii) the following person, if the person has a physician's order to withhold life
429 sustaining procedures that is issued in compliance with this section:

430 (A) a parent or legal guardian of a minor;

431 (B) a legal guardian appointed for an individual; or
432 (C) a surrogate.

433 (b) A person described in Subsection (1)(a)(iii) may direct an emergency service
434 provider to withhold life sustaining procedures if the person has a physician's order:
435 (i) made in compliance with Subsection (4); and
436 (ii) based on two physicians certifying that in their clinical judgment an order to
437 withhold life sustaining treatment is in the best interest of the individual.

438 (c) The physician order is binding upon emergency medical services providers only if
439 the physician order is in compliance with Subsections (2) and (4).

440 (2) (a) The Department of Health shall by administrative rule establish a uniform
441 system to allow emergency medical service providers to readily identify persons who have
442 obtained a physician order under this section.

443 (b) The system may provide for:
444 (i) personal, tamper-proof identifying bracelets;
445 (ii) forms;
446 (iii) the presence of the physician's orders on a form in compliance with Subsection (4)
447 and approved by the Department of Health; or
448 (iv) some other system approved by the Department of Health which clearly identifies
449 the individual as one who has a continued intent to be readily identified as a person with a
450 physician's order to withhold life support.

451 (3) An emergency medical services provider is not bound to act in accordance with a
452 physician order issued under this section unless the physician order complies with the
453 administrative rules adopted by the Department of Health in accordance with this section.

454 (4) A physician order made under this section shall be:
455 (a) in writing and on a form approved by the Department of Health;
456 (b) signed by:
457 (i) the declarant;
458 (ii) a person in the declarant's presence and by the declarant's expressed direction;
459 (iii) the parent or legal guardian of a minor; or
460 (iv) if the declarant does not have the ability to give current directions concerning the
461 declarant's care and treatment, the surrogate or class of surrogates with the highest priority

462 under Section 75-2a-1110;

463 (c) dated;

464 (d) signed, completed, and certified by the declarant's physician;

465 (e) signed pursuant to Subsection (4)(b); and

466 (f) if for a minor, in compliance with Subsection (1)(b).

467 (5) A physician order made under this section takes precedence over a directive made

468 under Section 75-2a-1106, but only to the extent of a conflict.

469 (6) An individual who wishes to revoke a physician order made under this section may

470 do so by:

471 (a) orally informing emergency service personnel;

472 (b) writing "void" across the form, or burning, tearing, or otherwise destroying or

473 defacing the document, bracelet, or other evidence of the physician order, or by asking another

474 person to do the same on the individual's behalf;

475 (c) signing or directing another person to sign a written revocation on the individual's

476 behalf;

477 (d) stating that the individual wishes to revoke the order in the presence of a witness

478 who is age 18 or older; or

479 (e) signing a new physician order.

480 (7) (a) The Department of Health shall adopt rules in accordance with Title 63, Chapter

481 46a, Utah Administrative Rulemaking Act, to:

482 (i) create the forms and systems required by Subsections (2) and (4); and

483 (ii) develop uniform instructions for the form established in Section 75-2a-1116.

484 (b) The Department of Health may assist others with training of health care

485 professionals regarding this chapter.

486 Section 8. Section **75-2a-1106** is enacted to read:

487 **75-2a-1106. Advanced health care directive -- Appointment of agent -- Powers of**

488 **agent -- Health care directions.**

489 (1) (a) An individual may make an advanced health care directive, in which the

490 individual may:

491 (i) appoint a health care agent or choose not to appoint a health care agent;

492 (ii) give directions for the care of the individual after the individual loses health care

493 decision making capacity or chooses not to give directions;
494 (iii) state conditions that must be met before life sustaining treatment may be withheld
495 or withdrawn;
496 (iv) authorize an agent to consent to the individual's participation in medical research;
497 (v) nominate a guardian;
498 (vi) authorize an agent to consent to organ donation;
499 (vii) expand or limit the powers of a health care agent; and
500 (viii) designate the agent's access to the individual's medical records.
501 (b) An advanced health care directive may be oral or written.
502 (c) An advanced health care directive shall be witnessed by an individual who is not:
503 (i) the person who signed the directive on behalf of the declarant;
504 (ii) related to the declarant by blood or marriage;
505 (iii) entitled to any portion of the declarant's estate according to the laws of intestate
506 succession of this state or under any will or codicil of the declarant;
507 (iv) directly financially responsible for the declarant's medical care;
508 (v) a health care provider who is providing care to the declarant or an administrator at a
509 health care facility in which the declarant is receiving care; or
510 (vi) the appointed agent.
511 (d) The witness to an oral advanced health care directive shall state the circumstances
512 under which the directive was made.
513 (2) Unless otherwise directed in a health care directive, the authority of an agent:
514 (a) is effective only after a health care provider makes a determination of incapacity as
515 provided in Section 75-2a-1104;
516 (b) remains in effect during any period of time in which the declarant lacks capacity to
517 appoint an agent or make health care decisions; and
518 (c) ceases to be effective when:
519 (i) a declarant disqualifies an agent or revokes the health care directive;
520 (ii) a health care provider finds that the declarant has health care decision making
521 capacity;
522 (iii) a court issues an order invalidating a health care directive or the application of the
523 health care directive; or

524 (iv) the individual has contested the determination of incapacity under the provisions
525 of Subsection 75-2a-1104(3).

526 (3) An agent appointed under the provisions of this section may not be a health care
527 provider for the declarant, or an owner, operator, or employee of the health care facility at
528 which the declarant is receiving care unless the agent is related to the declarant by blood,
529 marriage, or adoption.

530 (4) If the declarant does not specify the agent's access to medical records in an
531 advanced health care directive, the agent's access to medical records is governed by Section
532 75-2a-1112.

533 (5) An agent appointed by an individual is not subject to civil or criminal liability or to
534 claims of unprofessional conduct for health care decisions made in accordance with Section
535 75-2a-1109 and made in good faith.

536 Section 9. Section **75-2a-1107** is enacted to read:

537 **75-2a-1107. Default surrogates.**

538 (1) (a) Any member of the class of people described in Subsection (1)(b) may act as an
539 individual's surrogate health care decision maker if:

540 (i) the appointed agent or court-appointed guardian is absent or not reasonably
541 available; and

542 (ii) the member of the class described in Subsection (1)(b) is:

543 (A) over 18 years of age;

544 (B) has health care decision making capacity;

545 (C) is reasonably available; and

546 (D) has not been disqualified by the individual.

547 (b) The following classes of the individual's family, in descending order of priority,
548 may act as the individual's surrogate:

549 (i) the individual's spouse, unless:

550 (A) divorced or legally separated from the individual; or

551 (B) a court finds that the spouse has acted in a manner that should preclude the spouse
552 from having a priority position as a default surrogate;

553 (ii) a child;

554 (iii) a parent;

- 555 (iv) a sibling;
556 (v) a grandparent; or
557 (vi) a grandchild.
558 (2) If the family members designated in Subsection (1)(b) are not reasonably available
559 to act as a surrogate decision maker, a person other than those designated in Subsection (1)
560 may act as a surrogate if the person:
561 (a) has health care decision making capacity;
562 (b) has exhibited special care and concern for the patient;
563 (c) is familiar with the patient's personal values; and
564 (d) is reasonably available to act as a surrogate.
565 (3) A surrogate shall communicate his assumption of authority as promptly as
566 practicable to the members of a class who:
567 (a) have an equal or higher priority; and
568 (b) can be readily contacted.
569 (4) A health care provider shall comply with the decision of a majority of the members
570 of a class who have communicated their views to the provider if:
571 (a) more than one member of a class assumes authority to act as default surrogate;
572 (b) the members of the class do not agree on a health care decision; and
573 (c) the health care provider is informed of the disagreement among the members of the
574 class.
575 (5) (a) An individual may at any time disqualify a default surrogate, including a
576 member of the individual's family, from acting as the individual's surrogate by:
577 (i) a signed writing;
578 (ii) personally informing a witness of the disqualification so long as the witness is not:
579 (A) related to the individual by blood or marriage;
580 (B) entitled to any portion of the declarant's estate according to the laws of intestate
581 succession of this state or under any will or codicil of the declarant;
582 (C) directly financially responsible for the declarant's medical care;
583 (D) a health care provider who is providing care to the declarant or an administrator at
584 a health care facility in which the declarant is receiving care; or
585 (E) an individual who would become a default surrogate after the disqualification; or

586 (iii) verbally informing the default surrogate of the disqualification.

587 (b) Disqualification of a default surrogate is effective even if the individual has been
588 determined to lack health care decision making capacity.

589 (6) If reasonable doubt exists regarding the status of an individual claiming the right to
590 act as a default surrogate, the health care provider may:

591 (a) require the person to provide a sworn statement giving facts and circumstances
592 reasonably sufficient to establish the claimed authority; or

593 (b) seek a ruling from the court under Section 75-2a-1119.

594 (7) A health care provider may seek a ruling from a court pursuant to Section
595 75-2a-1119 if the health care provider has evidence that a surrogate is making decisions that
596 are inconsistent with the individual's wishes or preferences.

597 Section 10. Section **75-2a-1108** is enacted to read:

598 **75-2a-1108. Effect of current health care preferences -- When directive takes**
599 **effect.**

600 (1) An individual with health care decision making capacity retains the right to make
601 health care decisions as long as the individual has health care decision making capacity as
602 defined in Section 75-2a-1103. For purposes of this part, the inability to communicate through
603 speech does not mean that the individual lacks health care decision making capacity.

604 (2) An individual's current health care decisions, however expressed or indicated,
605 always supersede an individual's prior decisions or health care directives.

606 (3) An individual's health care directive takes effect only after the individual loses
607 health care decision making capacity or the individual grants current authority to an agent in
608 accordance with Section 75-2a-1106.

609 Section 11. Section **75-2a-1109** is enacted to read:

610 **75-2a-1109. Surrogate decision making -- Scope of authority.**

611 (1) A surrogate decision maker acting under the authority of either Section 75-2a-1106
612 or 75-2a-1107 shall make health care decisions in accordance with:

613 (a) the individual's current preferences, to the extent possible;

614 (b) the individual's written or oral health care directions, if any, unless the health care
615 directive indicates that the surrogate may override the individual's health care directions; and

616 (c) other wishes, preferences, and beliefs, to the extent known to the surrogate.

617 (2) If the surrogate does not know, and has no ability to know, the wishes or
618 preferences of the individual, the surrogate shall make a decision based upon an objective
619 determination of what is in the individual's best interest.

620 (3) A surrogate acting under authority of Sections 75-2a-1106 and 75-2a-1107:

621 (a) may not admit the individual to a licensed health care facility for long-term
622 custodial placement other than for assessment, rehabilitative, or respite care without the
623 consent of the individual; and

624 (b) may make health care decisions, including decisions to terminate life sustaining
625 treatment for the individual in accordance with Subsections (1) and (2).

626 (4) A surrogate acting under authority of this section is not subject to civil or criminal
627 liability or claims of unprofessional conduct for surrogate health care decisions made in good
628 faith.

629 Section 12. Section **75-2a-1110** is enacted to read:

630 **75-2a-1110. Priority of decision makers.**

631 The following is the order of priority of those authorized to make health care decisions
632 on behalf of an individual who lacks decision making capacity:

633 (1) a health care agent appointed by an individual under the provisions of Section
634 75-2a-1106 unless the agent has been disqualified by:

635 (a) the individual; or

636 (b) a court of law;

637 (2) a court-appointed guardian; or

638 (3) a default surrogate acting under authority of Section 75-2a-1107.

639 Section 13. Section **75-2a-1111** is enacted to read:

640 **75-2a-1111. Decisions by guardian.**

641 (1) A court-appointed guardian shall comply with the individual's advanced health care
642 directive and may not revoke the individual's advanced health care directive unless the court
643 expressly revokes the individual's directive.

644 (2) A health care decision of an agent takes precedence over that of a guardian, in the
645 absence of a court order to the contrary.

646 (3) Except as provided in Subsections (1) and (2), a health care decision made by a
647 guardian for the individual is effective without judicial approval.

648 (4) A guardian is not subject to civil or criminal liability or to claims of unprofessional
649 conduct for surrogate health care decision in accordance with Section 75-2a-1109 made in
650 good faith.

651 Section 14. Section **75-2a-1112** is enacted to read:

652 **75-2a-1112. Personal representative status.**

653 A surrogate or a guardian appointed in compliance with this part, becomes a personal
654 representative for the individual under the Health Insurance Portability and Accountability Act
655 of 1996 when:

656 (1) the individual loses health care decision making capacity;

657 (2) the individual grants current authority to the surrogate in accordance with Section
658 75-2a-1106 either:

659 (a) in writing;

660 (b) orally; or

661 (c) by other expression before a witness who is not the surrogate or agent; or

662 (3) the court appoints a guardian authorized to make health care decisions on behalf of
663 the individual.

664 Section 15. Section **75-2a-1113** is enacted to read:

665 **75-2a-1113. Revocation of directive.**

666 (1) An advanced directive may be revoked at any time by the declarant by:

667 (a) writing "void" across the document;

668 (b) obliterating, burning, tearing, or otherwise destroying or defacing the document in
669 any manner indicating an intent to revoke;

670 (c) instructing another to do one of the acts described in Subsection (1)(a) or (b);

671 (d) a written revocation of the directive signed and dated by:

672 (i) the declarant; or

673 (ii) a person:

674 (A) signing on behalf of the declarant; and

675 (B) acting at the direction of the declarant;

676 (e) an oral expression of an intent to revoke the directive in the presence of a witness
677 who is age 18 years or older and who is not:

678 (i) related to the declarant by blood or marriage;

- 679 (ii) entitled to any portion of the declarant's estate according to the laws of intestate
680 succession of this state or under any will or codicil of the declarant;
681 (iii) directly financially responsible for the declarant's medical care;
682 (iv) a health care provider who is providing care to the declarant or an administrator at
683 a health care facility in which the declarant is receiving care; or
684 (v) the person who will become agent or default surrogate after the revocation; or
685 (f) a decree of annulment, divorce, dissolution of marriage, or legal separation that
686 revokes the designation of a spouse as an agent, unless:
687 (i) otherwise specified in the decree; or
688 (ii) the declarant has affirmed the intent to retain the agent subsequent to the
689 annulment, divorce, or legal separation.

690 (2) An advanced health care directive that conflicts with an earlier advanced health
691 care directive revokes the earlier directive to the extent of the conflict.

692 Section 16. Section **75-2a-1114** is enacted to read:

693 **75-2a-1114. Notification to health care provider -- Obligations of health care**
694 **providers -- Liability.**

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

- 698 (a) the existence of a health care directive;
699 (b) the revocation of a health care directive;
700 (c) the existence or revocation of appointment of an agent or default surrogate;
701 (d) the disqualification of a default surrogate; or
702 (e) the appointment or revocation of appointment of a guardian.

703 (2) (a) A health care provider or health care facility is not bound by a health care
704 directive, a revocation of a health care directive, or a disqualification of a surrogate until the
705 health care provider or health care facility know about the existence or revocation of the health
706 care directive, or the disqualification of the surrogate. There is no criminal or civil liability on
707 the part of any person for failing to act upon a health care directive or a revocation of a
708 directive, or disqualification of a surrogate unless that person has actual knowledge of the
709 health care directive, revocation of the directive, or disqualification of a surrogate.

710 (b) A health care provider and health care facility that is notified under Subsection (1)
711 shall include in the individual's medical record:

712 (i) the health care directive or a copy of it, a revocation of a health care directive, or a
713 disqualification of a surrogate; and

714 (ii) the date, time, and place in which any written or oral notice of the document
715 described in this Subsection (2)(b) is received.

716 (3) A health care provider or health care facility acting in good faith and in accordance
717 with generally accepted health care standards is not subject to civil or criminal liability or to
718 discipline for unprofessional conduct for:

719 (a) complying with a health care decision made by a surrogate apparently having
720 authority to make a health care decision for an individual, including a decision to withhold or
721 withdraw health care;

722 (b) declining to comply with a health care decision of a surrogate based on a belief that
723 the surrogate then lacked authority;

724 (c) declining to comply with a health care decision of an individual who lacks decision
725 making capacity;

726 (d) seeking a judicial determination under Section 75-2a-1119 of:

727 (i) the validity of a health care directive;

728 (ii) the validity of directions from a surrogate or guardian;

729 (iii) the decision making capacity of an individual who challenges a physician's finding
730 of incapacity; or

731 (iv) the authority of a guardian or surrogate; or

732 (e) complying with an advanced health care directive and assuming that the directive
733 was valid when made, and has not been revoked or terminated.

734 (4) (a) Health care providers and health care facilities shall:

735 (i) cooperate with a person authorized under this part to make written directives
736 concerning health care;

737 (ii) unless the provisions of Subsection (4)(b) apply, comply with:

738 (A) a health care decision of an individual; and

739 (B) a health care decision made by a surrogate then authorized to make health care
740 decisions for an individual, to the same extent as if the decision had been made by the

741 individual; and
742 (iii) before implementing a health care decision made by a surrogate, make a
743 reasonable attempt to communicate to the individual:
744 (A) the decision made; and
745 (B) the identity of the surrogate making the decision.
746 (b) A health care provider or health care facility may decline to comply with a health
747 care instruction or health care decision if:
748 (i) in the opinion of the health care provider:
749 (A) the individual lacks health care decision making capacity;
750 (B) the surrogate lacks health care decision making capacity;
751 (C) the health care provider has evidence that the surrogate's instructions are
752 inconsistent with the individual's health care instructions, or, for an individual who has always
753 lacked health care decision making capacity, that the surrogate's instructions are inconsistent
754 with the best interest of the individual; or
755 (D) there is reasonable doubt regarding the status of an individual claiming the right to
756 act as a default surrogate, in which case the health care provider shall comply with Subsection
757 75-2a-1107(6); or
758 (ii) the health care provider declines to comply for reasons of conscience.
759 (c) A health care provider or health care facility that declines to comply with a health
760 care instruction in accordance with Subsection (4)(b) must:
761 (i) promptly inform the individual and any agent, surrogate, or guardian of the reason
762 for refusing to comply with the health care instruction;
763 (ii) make a good faith attempt to resolve the conflict; and
764 (iii) provide continuing care to the individual until the issue is resolved or until a
765 transfer can be made to a health care provider or health care facility that will implement the
766 requested instruction or decision.
767 (d) A health care provider or health care facility that declines to comply with a health
768 care instruction, after meeting the obligations set forth in Subsection (4)(c) may transfer the
769 individual to a health care provider or health care facility that will carry out the requested
770 health care decisions.
771 (e) A health care facility may decline for reasons of conscience under Subsection

772 (4)(b)(ii) if:

773 (i) the health care decision or instruction is contrary to a policy of the facility that is
774 expressly based on reasons of conscience;

775 (ii) the policy was timely communicated to the individual and the individual's
776 surrogate;

777 (iii) the facility promptly informs the individual, if possible, and any surrogate then
778 authorized to make decisions for the individual;

779 (iv) the facility provides continuing care to the individual until a transfer can be made
780 to a health care facility that will implement the requested instruction or decision; and

781 (v) unless the individual or surrogate then authorized to make health care decisions for
782 an individual refuses assistance, immediately make all reasonable efforts to assist in the
783 transfer of the individual to another health care facility that will carry out the instructions or
784 decisions.

785 (5) A health care provider and health care facility:

786 (a) may not require or prohibit the creation or revocation of an advanced health care
787 directive as a condition for providing health care; and

788 (b) shall comply with all state and federal laws governing advanced health care
789 directives.

790 Section 17. Section **75-2a-1115** is enacted to read:

791 **75-2a-1115. Presumption of validity of directive.**

792 (1) A health care directive executed under this part is presumed valid and binding.

793 (2) Health care providers and health care facilities, in the absence of notice to the
794 contrary, shall presume that a declarant who executed a health care directive, whether or not in
795 the presence of a health care provider, had the required decision making capacity at the time the
796 declarant signed the directive. The fact a declarant executed a health care directive shall not be
797 construed as an indication that the declarant was suffering from mental illness or lacked
798 decision making capacity.

799 Section 18. Section **75-2a-1116** is enacted to read:

800 **75-2a-1116. Optional form.**

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

803 (2) The following form is presumed valid under Subsection (1):

804 **Utah Advanced Health Care Directive**

805 (Pursuant to Section 75-2a-1116)

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

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

809 Part III: Tells you how to revoke the form.

810 Part IV: Makes your directive legal.

811 _____

812 **My Personal Information**

813 Name: _____

814 Street Address: _____

815 City, State, Zip: _____

816 Telephone: _____ Cell Phone: _____

817 Birth date: _____

818 _____

819 **Part I: My Agent**

820 **A. No Agent**

821 _____ I do not want to choose an agent. **Initial if you do not want to name an agent,**
822 **then go to Part II. Do not name an agent below. No individual, organization, family**
823 **member, health care provider, lawyer, or insurer should force you to name an agent.**

824 **B. My Agent**

825 Agent's Name: _____

826 _____

827 Street Address: _____

828 _____

829 City, State, Zip: _____

830 _____

831 Home Phone: () _____ Cell Phone: () _____ Work Phone: () _____

832 **C. Alternate Agent**

833 Alternate Agent's Name: _____

834 _____

835 Street Address:

836 _____

837 City, State, Zip:

838 _____

839 Home Phone: () _____ Cell Phone: () _____ Work Phone: () _____

840 **D. Agent's Authority**

841 If I cannot make decisions or speak for myself, my agent has the power to make any health care
842 decision I would have had the power to make, including:

843 Consent to, refuse, or withdraw any health care, including, but not limited to life sustaining
844 care, such as food and fluids by tube, use of antibiotics, CPR (cardiopulmonary resuscitation),
845 and dialysis, and mental health care, such as convulsive therapy and psychoactive medications.

846 Stop or not start health care that is keeping me alive or might extend my life.

847 Hire and fire health care providers.

848 Ask questions and get answers from health care providers.

849 Consent to admission or transfer to a health care provider or health care facility, including a
850 mental health facility, subject to the limits in Section E, below.

851 Get copies of my medical records.

852 Ask for consultations or second opinions.

853 **E. Other Authority**

854 My agent has the powers below ONLY IF I place my initials over "agree" next to the statement.

855 I authorize my agent to:

856 Agree _____ Disagree _____ Get copies of my medical records at any time, even when
857 I can speak for myself.

858 Agree _____ Disagree _____ Admit me to a licensed health care facility, such as a
859 hospital, nursing home, assisted living, or other congregate facility for long-term placement
860 other than convalescent or recuperative care, unless I agree to be admitted at that time.

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

862 _____
863 _____

864 **G. Nomination of Guardian**

865 Agree _____ Disagree _____ By appointing an agent in this document, I intend to avoid
 866 a court-supervised guardianship, if possible. If I need a court-appointed guardian, I want the
 867 agent I have appointed in this form to be my guardian. If that agent cannot or will not act as
 868 my guardian, I want my alternate agent to be my guardian.

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

870 Agree _____ Disagree _____ I authorize my agent to consent to my participation in
 871 medical research or clinical trials, even if I may not benefit from the results.

872 **I. Consent to Organ Donation**

873 Agree _____ Disagree _____ My agent may consent to the donation of my organs for
 874 the purpose of organ transplantation.

875 **J. Agent's Authority to Override Expressed Wishes**

876 Agree _____ Disagree _____ My agent may make decisions about health care that are
 877 different from the instructions in Part II of this form.

879 **Part II: My Health Care Wishes**

880 My current instructions to my health care providers should be followed, so long as I can make
 881 health care decisions, even if the instructions appear to conflict with these or other advance
 882 directives. My health care providers should always provide comfort measures and health care
 883 to keep me as comfortable and functional and possible.

884 **A. Health Care Instructions**

885 **Initial one of the following:**

886 _____ **I choose to let my agent decide.** I have chosen my agent carefully. I have
 887 talked with my agent about my health care wishes. I trust that my agent will make the decision
 888 about end-of-life care that I would want under the circumstances. Except as it is limited in
 889 Section B, below, my agent's power includes the power to agree to stop or not start life
 890 sustaining treatment, as described in Part I, Section D.

891 _____ I want this instruction followed without condition.

892 **Go to Section C. Do not check conditions in Section B.**

893 _____ I want this instruction followed only after the conditions in Section B are met.

894 _____ **I want to prolong life.** Regardless of my condition or prognosis, I want my
 895 health care providers to try to keep me alive as long as possible, within the limits of generally

896 accepted health care standards. Go to Section C. Do not check conditions in Section B.

897 _____ I choose NOT to receive care for the purpose of prolonging life. I authorize
898 the withholding or withdrawal of life sustaining treatments, including, but not limited to food
899 and fluids by tube, use of antibiotics, CPR, or dialysis administered for the purpose of
900 extending my life. I do want comfort care and routine medical care that will keep me as
901 comfortable and functional as possible, even if such care may extend my life.

902 _____ I want this instruction followed without condition. Go to Section C. Do not
903 check conditions in Section B.

904 _____ I want this instruction followed only if the conditions in Section B are met.

905 _____ I choose not to provide instructions about end-of-life care in this directive.

906 **Go to Part III.**

907 **Comments:**

908 _____
909 _____
910 _____

911 **B. Conditions for Withdrawal of Life Sustaining Care**

912 My health care team may withhold or withdraw life sustaining treatment based on this directive
913 or at the instruction of my agent or a default surrogate only if the conditions that I initial below
914 are met. If your wishes are without condition, do not complete this section.

915 Agree _____ Disagree _____ I have a progressive illness that will cause death.
916 Agree _____ Disagree _____ I am close to death and am unlikely to recover.
917 Agree _____ Disagree _____ I cannot communicate and it is unlikely that my condition
918 will improve.

919 Agree _____ Disagree _____ I do not recognize my friends or family and it is unlikely
920 that my condition will improve.

921 Agree _____ Disagree _____ I am in a persistent vegetative state.

922 **Additional or Other Instructions:**

923 _____
924 _____

925 **Part III: Revoking My Directive**

926 I may revoke this directive by:

- 927 1. Writing "void" across the form, or burning, tearing, or otherwise destroying or defacing the
- 928 document or asking another person to do the same on my behalf;
- 929 2. Signing or directing another person to sign a written revocation on my behalf;
- 930 3. Stating that I wish to revoke the directive in the presence of a witness who meets the
- 931 requirements of the witness in Part IV, below, and who will not be appointed as agent or
- 932 become a default surrogate when the directive is revoked; or
- 933 4. Signing a new directive. (If you sign more than one Advanced Health Care Directive, the
- 934 most recent one applies.)

Part IV: Making My Directive Legal

936 I sign this voluntarily. I understand the choices I have made. I declare that I am emotionally
937 and mentally able to make this directive.

938 Date: _____

939 Signature: _____

940 I have witnessed the signing of this directive, and I am not:

- 941 1. Related to the declarant by blood or marriage;
- 942 2. Entitled to any portion of the declarant's estate according to the laws of intestate succession
- 943 of this state or under any will or codicil of the declarant;
- 944 3. Directly financially responsible for the declarant's medical care;
- 945 4. A health care provider who is providing care to the declarant or an administrator at a health
- 946 care facility in which the declarant is receiving care; or
- 947 5. The appointed agent.

948 Signature of Witness:
949 _____

950 Section 19. Section **75-2a-1117** is enacted to read:

951 **75-2a-1117. Illegal destruction or falsification of health care directive.**

952 (1) A person is guilty of a class B misdemeanor if the person:

953 (a) willfully conceals, cancels, defaces, obliterates, or damages a health care directive
954 of another without the declarant's consent; or

955 (b) who falsifies or forges a revocation of the health care directive of another.

956 (2) A person is guilty of criminal homicide if:

957 (a) the person:

958 (i) falsifies or forges the health care directive of another; or
959 (ii) willfully conceals or withholds personal knowledge of:
960 (A) the revocation of a health care directive; or
961 (B) disqualification of a surrogate; and
962 (b) the actions described in Subsection (2)(a) cause a withholding or withdrawal of life
963 sustaining procedures contrary to the wishes of a declarant resulting in the death of the
964 declarant.

965 Section 20. Section **75-2a-1118** is enacted to read:

966 **75-2a-1118. Health care directive effect on insurance policies.**

967 (1) If an individual makes a health care directive under this part, the health care
968 directive does not affect in any manner:

- 969 (a) the obligation of any life or medical insurance company regarding any policy of life
970 or medical insurance;
- 971 (b) the sale, procurement, or issuance of any policy of life or health insurance; or
- 972 (c) the terms of any existing policy.

973 (2) (a) Notwithstanding any terms of an insurance policy to the contrary, an insurance
974 policy is not legally impaired or invalidated in any manner by:

- 975 (i) withholding or withdrawing life sustaining procedures; or
- 976 (ii) following directions in a health care directive executed as provided in this part.
- 977 (b) Following health care instructions in a health care directive does not constitute
978 legal cause for failing to pay life or health insurance benefits. Death that occurs after following
979 the instructions of an advanced health care directive or a surrogate's instructions does not for
980 any purpose constitute a suicide or homicide or legally impair or invalidate a policy of
981 insurance or an annuity providing a death benefit.

982 (3) (a) The following may not require an individual to execute a directive under this
983 part as a condition for being insured for or receiving health care or life insurance contract
984 services:

- 985 (i) a health care provider;
- 986 (ii) a health care facility;
- 987 (iii) a health maintenance organization;
- 988 (iv) an insurer issuing disability, health, or life insurance;

- 989 (v) a self-insured employee welfare or benefit plan;
- 990 (vi) a nonprofit medical service corporation or mutual nonprofit hospital service
- 991 corporation; or
- 992 (v) any other person, firm, or entity.
- 993 (b) Nothing in this part:
- 994 (i) may be construed to require an insurer to insure risks otherwise considered by the
- 995 insurer as unsuitable;
- 996 (ii) is intended to impair or supersede any other legal right or legal responsibility which
- 997 an individual may have to effect the withholding or withdrawal of life sustaining procedures in
- 998 any lawful manner; or
- 999 (iii) creates any presumption concerning the intention of an individual who has not
- 1000 executed a health care directive.

Section 21. Section **75-2a-1119** is enacted to read:

75-2a-1119. Judicial relief.

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

- 1005 (1) a patient;
- 1006 (2) an agent of a patient;
- 1007 (3) a guardian of a patient;
- 1008 (4) a default surrogate of a patient;
- 1009 (5) a health care provider of a patient;
- 1010 (6) a health care facility providing care for a patient; or
- 1011 (7) an individual who meets the requirements of Section 75-2a-1107.

Section 22. Section **75-2a-1120** is enacted to read:

75-2a-1120. Reciprocity.

Unless otherwise provided in the health care directive:

- 1015 (1) a health care provider or health care facility may, in good faith, rely on any health
- 1016 care directive, power of attorney, or similar instrument:
- 1017 (a) executed in another state; or
- 1018 (b) prior to January 1, 2008, executed in this state under the provisions of Chapter 2,
- 1019 Part 11, Personal Choice and Living Will Act; and

1020 (2) the health care directive described in Subsection (1) is presumed to comply with the
1021 requirements of this part.

1022 Section 23. Section **75-2a-1121** is enacted to read:

1023 **75-2a-1121. Effect of act.**

1024 The Advanced Health Care Directive Act created in this part does not:

1025 (1) create a presumption concerning the intention of an individual who has not made or
1026 who has revoked an advanced health care directive;

1027 (2) authorize mercy killing, assisted suicide, or euthanasia; and

1028 (3) authorize the provision, withholding, or withdrawal of health care, to the extent
1029 prohibited by the laws of this state.

1030 Section 24. Section **75-2a-1122** is enacted to read:

1031 **75-2a-1122. Pregnancy.**

1032 A health care directive that provides for the withholding or withdrawal of life
1033 sustaining procedures has no force during the course of a declarant's pregnancy.

1034 Section 25. Section **75-2a-1123** is enacted to read:

1035 **75-2a-1123. Provisions cumulative with existing law.**

1036 The provisions of this chapter are cumulative with existing law regarding an
1037 individual's right to consent or refuse to consent to medical treatment and do not impair any
1038 existing rights or responsibilities that a health care provider, an individual, including a minor or
1039 incapacitated individual, or an individual's family or surrogate may have in regard to the
1040 provision, withholding or withdrawal of life sustaining procedures under the common law or
1041 statutes of the state.

1042 Section 26. Section **76-5-111** is amended to read:

1043 **76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.**

1044 (1) As used in this section:

1045 (a) "Abandonment" means a knowing or intentional action or inaction, including
1046 desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the
1047 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or
1048 medical or other health care.

1049 (b) "Abuse" means:

1050 (i) attempting to cause harm, intentionally or knowingly causing harm, or intentionally

1051 or knowingly placing another in fear of imminent harm;

1052 (ii) causing physical injury by knowing or intentional acts or omissions;

1053 (iii) unreasonable or inappropriate use of physical restraint, medication, or isolation

1054 that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's

1055 orders or used as an unauthorized substitute for treatment, unless that conduct furthers the

1056 health and safety of the adult; or

1057 (iv) deprivation of life-sustaining treatment, except:

1058 (A) as provided in Title 75, Chapter [2] 2a, Part 11, [~~Personal Choice and Living Will~~]

1059 Advanced Health Care Directive Act; or

1060 (B) when informed consent, as defined in this section, has been obtained.

1061 (c) "Business relationship" means a relationship between two or more individuals or

1062 entities where there exists an oral or written agreement for the exchange of goods or services.

1063 (d) "Caretaker" means any person, entity, corporation, or public institution that

1064 assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing,

1065 supervision, medical or other health care, or other necessities. "Caretaker" includes a relative

1066 by blood or marriage, a household member, a person who is employed or who provides

1067 volunteer work, or a person who contracts or is under court order to provide care.

1068 (e) "Deception" means:

1069 (i) a misrepresentation or concealment:

1070 (A) of a material fact relating to services rendered, disposition of property, or use of

1071 property intended to benefit a vulnerable adult;

1072 (B) of the terms of a contract or agreement entered into with a vulnerable adult; or

1073 (C) relating to the existing or preexisting condition of any property involved in a

1074 contract or agreement entered into with a vulnerable adult; or

1075 (ii) the use or employment of any misrepresentation, false pretense, or false promise in

1076 order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.

1077 (f) "Elder adult" means a person 65 years of age or older.

1078 (g) "Endeavor" means to attempt or try.

1079 (h) "Exploitation" means the offense described in Subsection (4).

1080 (i) "Harm" means pain, mental anguish, emotional distress, hurt, physical or

1081 psychological damage, physical injury, suffering, or distress inflicted knowingly or

1082 intentionally.

1083 (j) "Informed consent" means:

1084 (i) a written expression by the person or authorized by the person, stating that the
1085 person fully understands the potential risks and benefits of the withdrawal of food, water,
1086 medication, medical services, shelter, cooling, heating, or other services necessary to maintain
1087 minimum physical or mental health, and that the person desires that the services be withdrawn.
1088 A written expression is valid only if the person is of sound mind when the consent is given, and
1089 the consent is witnessed by at least two individuals who do not benefit from the withdrawal of
1090 services; or

1091 (ii) consent to withdraw food, water, medication, medical services, shelter, cooling,
1092 heating, or other services necessary to maintain minimum physical or mental health, as
1093 permitted by court order.

1094 (k) "Intimidation" means communication conveyed through verbal or nonverbal
1095 conduct which threatens deprivation of money, food, clothing, medicine, shelter, social
1096 interaction, supervision, health care, or companionship, or which threatens isolation or harm.

1097 (l) (i) "Isolation" means knowingly or intentionally preventing a vulnerable adult from
1098 having contact with another person by:

1099 (A) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,
1100 contrary to the express wishes of the vulnerable adult, including communicating to a visitor
1101 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,
1102 knowing that communication to be false;

1103 (B) physically restraining the vulnerable adult in order to prevent the vulnerable adult
1104 from meeting with a visitor; or

1105 (C) making false or misleading statements to the vulnerable adult in order to induce the
1106 vulnerable adult to refuse to receive communication from visitors or other family members.

1107 (ii) The term "isolation" does not include an act intended to protect the physical or
1108 mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or
1109 instructions of a physician or other professional advisor of the vulnerable adult.

1110 (m) "Lacks capacity to consent" means an impairment by reason of mental illness,
1111 developmental disability, organic brain disorder, physical illness or disability, chronic use of
1112 drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a

1113 vulnerable adult lacks sufficient understanding of the nature or consequences of decisions
1114 concerning the adult's person or property.

1115 (n) "Neglect" means:

1116 (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal
1117 care, or dental or other health care, or failure to provide protection from health and safety
1118 hazards or maltreatment;

1119 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and
1120 with the degree of care that a reasonable person in a like position would exercise;

1121 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed
1122 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
1123 heating, or other services necessary to maintain the vulnerable adult's well being;

1124 (iv) intentional failure by a caretaker to carry out a prescribed treatment plan that
1125 results or could result in physical injury or physical harm; or

1126 (v) abandonment by a caretaker.

1127 (o) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic
1128 conduct, to the extent that the tissue must undergo a healing process in order to be restored to a
1129 sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot
1130 be restored to a sound and healthy condition. "Physical injury" includes skin bruising, a
1131 dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding,
1132 malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling,
1133 injury to any internal organ, or any other physical condition that imperils the health or welfare
1134 of the vulnerable adult and is not a serious physical injury as defined in this section.

1135 (p) "Position of trust and confidence" means the position of a person who:

1136 (i) is a parent, spouse, adult child, or other relative by blood or marriage of a vulnerable
1137 adult;

1138 (ii) is a joint tenant or tenant in common with a vulnerable adult;

1139 (iii) has a legal or fiduciary relationship with a vulnerable adult, including a
1140 court-appointed or voluntary guardian, trustee, attorney, or conservator; or

1141 (iv) is a caretaker of a vulnerable adult.

1142 (q) "Serious physical injury" means any physical injury or set of physical injuries that:

1143 (i) seriously impairs a vulnerable adult's health;

- 1144 (ii) was caused by use of a dangerous weapon as defined in Section 76-1-601;
- 1145 (iii) involves physical torture or causes serious emotional harm to a vulnerable adult; or
- 1146 (iv) creates a reasonable risk of death.

1147 (r) "Sexual exploitation" means the production, distribution, possession, or possession
1148 with the intent to distribute material or a live performance depicting a nude or partially nude
1149 vulnerable adult who lacks the capacity to consent, for the purpose of sexual arousal of any
1150 person.

1151 (s) "Undue influence" occurs when a person uses the person's role, relationship, or
1152 power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear
1153 of a vulnerable adult, or uses the person's role, relationship, or power to gain control
1154 deceptively over the decision making of the vulnerable adult.

1155 (t) "Vulnerable adult" means an elder adult, or an adult 18 years of age or older who
1156 has a mental or physical impairment which substantially affects that person's ability to:

- 1157 (i) provide personal protection;
- 1158 (ii) provide necessities such as food, shelter, clothing, or medical or other health care;
- 1159 (iii) obtain services necessary for health, safety, or welfare;
- 1160 (iv) carry out the activities of daily living;
- 1161 (v) manage the adult's own resources; or
- 1162 (vi) comprehend the nature and consequences of remaining in a situation of abuse,
1163 neglect, or exploitation.

1164 (2) Under any circumstances likely to produce death or serious physical injury, any
1165 person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or,
1166 having the care or custody of a vulnerable adult, causes or permits that adult's person or health
1167 to be injured, or causes or permits a vulnerable adult to be placed in a situation where the
1168 adult's person or health is endangered, is guilty of the offense of aggravated abuse of a
1169 vulnerable adult as follows:

- 1170 (a) if done intentionally or knowingly, the offense is a second degree felony;
- 1171 (b) if done recklessly, the offense is third degree felony; and
- 1172 (c) if done with criminal negligence, the offense is a class A misdemeanor.

1173 (3) Under circumstances other than those likely to produce death or serious physical
1174 injury any person, including a caretaker, who causes a vulnerable adult to suffer harm, abuse,

1175 or neglect; or, having the care or custody of a vulnerable adult, causes or permits that adult's
1176 person or health to be injured, abused, or neglected, or causes or permits a vulnerable adult to
1177 be placed in a situation where the adult's person or health is endangered, is guilty of the offense
1178 of abuse of a vulnerable adult as follows:

1179 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;

1180 (b) if done recklessly, the offense is a class B misdemeanor; and

1181 (c) if done with criminal negligence, the offense is a class C misdemeanor.

1182 (4) (a) A person commits the offense of exploitation of a vulnerable adult when the
1183 person:

1184 (i) is in a position of trust and confidence, or has a business relationship, with the
1185 vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception
1186 or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds,
1187 credit, assets, or other property with the intent to temporarily or permanently deprive the
1188 vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of
1189 someone other than the vulnerable adult;

1190 (ii) knows or should know that the vulnerable adult lacks the capacity to consent, and
1191 obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or
1192 endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to
1193 temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of his
1194 property for the benefit of someone other than the vulnerable adult;

1195 (iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the
1196 profit or advantage of someone other than the vulnerable adult;

1197 (iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship
1198 for the profit or advantage of someone other than the vulnerable adult;

1199 (v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or
1200 furtherance of any criminal activity; or

1201 (vi) commits sexual exploitation of a vulnerable adult.

1202 (b) A person is guilty of the offense of exploitation of a vulnerable adult as follows:

1203 (i) if done intentionally or knowingly and the aggregate value of the resources used or
1204 the profit made is or exceeds \$5,000, the offense is a second degree felony;

1205 (ii) if done intentionally or knowingly and the aggregate value of the resources used or

1206 the profit made is less than \$5,000 or cannot be determined, the offense is a third degree
1207 felony;

1208 (iii) if done recklessly, the offense is a class A misdemeanor; or

1209 (iv) if done with criminal negligence, the offense is a class B misdemeanor.

1210 (5) It does not constitute a defense to a prosecution for any violation of this section that
1211 the accused did not know the age of the victim.

1212 (6) An adult is not considered abused, neglected, or a vulnerable adult for the reason
1213 that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of
1214 medical care.

1215 **Section 27. Repealer.**

1216 This bill repeals:

1217 **Section 75-2-1101, Short title.**

1218 **Section 75-2-1102, Intent statement.**

1219 **Section 75-2-1103, Definitions.**

1220 **Section 75-2-1104, Directive for medical services.**

1221 **Section 75-2-1105, Directive for medical services after injury or illness is incurred.**

1222 **Section 75-2-1105.5, Emergency medical services -- Directive not to resuscitate.**

1223 **Section 75-2-1106, Special power of attorney.**

1224 **Section 75-2-1107, Medical services for terminal persons without a directive.**

1225 **Section 75-2-1108, Current desires of declarant.**

1226 **Section 75-2-1109, Pregnancy.**

1227 **Section 75-2-1110, Notification to physician.**

1228 **Section 75-2-1111, Revocation of directive.**

1229 **Section 75-2-1112, Physician compliance with directive.**

1230 **Section 75-2-1113, Presumption of validity of directive.**

1231 **Section 75-2-1114, Physician liability for compliance with directive.**

1232 **Section 75-2-1115, Illegal destruction or falsification of directive.**

1233 **Section 75-2-1116, Compliance with directive is not suicide.**

1234 **Section 75-2-1117, No insurance or health care provider may require a directive.**

1235 **Section 75-2-1118, Directive not mercy killing.**

1236 **Section 75-2-1119, Reciprocity.**

1237 Section 28. **Effective date.**

1238 This bill takes effect on January 1, 2008.

Legislative Review Note
as of 1-24-07 10:23 AM

Office of Legislative Research and General Counsel