

Senator Allen M. Christensen proposes the following substitute bill:

ADVANCE HEALTH CARE DIRECTIVE ACT

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Allen M. Christensen

House Sponsor: Scott L Wyatt

LONG TITLE

General Description:

This bill repeals the Personal Choice and Living Will Act and enacts the Advance 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;



- 26 ▶ provides for the revocation of a health care directive;
- 27 ▶ 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 Advance 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. Advance Health Care Directive Act**

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

226 This part is known as the "Advance 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 life;

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 advance 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 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 the 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, procedures, programs of medication,
312 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 advance 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 a physician finds that an individual lacks health care decision making capacity
373 in accordance with Subsection (2), the individual may at any time, challenge the finding by:
374 (i) submitting to a health care provider a written notice stating that the individual
375 disagrees with the physician's finding; or
376 (ii) orally informing the health care provider that the individual disagrees with the
377 physician's finding.
378 (b) A health care provider who is informed of a challenge pursuant to Subsection (3)(a)
379 shall promptly inform an individual, if any, who is serving as surrogate of the individual's
380 challenge.
381 (c) A surrogate informed of a challenge to a finding under this section, or the
382 individual if no surrogate is acting on the individual's behalf, shall inform the following of the
383 individual's challenge:
384 (i) any other health care providers involved in the individual's care; and
385 (ii) the health care facility, if any, in which the individual is receiving care.
386 (d) An individual's challenge to a finding under this section is binding on a health care
387 provider and a health care facility unless otherwise ordered by a court.
388 (e) If an individual does not challenge a finding, the health care provider and health
389 care facility may rely on a surrogate to make health care decisions for the individual.
390 (4) A health care provider or health care facility providing care to the individual that
391 relies on a surrogate to make decisions on behalf of an individual has an ongoing obligation to
392 consider whether the individual continues to lack health care decision making 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 advance 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 advance 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) if the physician's order applies to a minor, it must include a certification by two
437 physicians that in their clinical judgment an order to withhold life sustaining treatment is in the
438 best interest of the individual.

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

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

444 (b) The system may provide for:

445 (i) personal, tamper-proof identifying bracelets;

446 (ii) forms;

447 (iii) the presence of the physician's orders on a form in compliance with Subsection (4)
448 and approved by the Department of Health; or

449 (iv) some other system approved by the Department of Health which clearly identifies
450 the individual as one who has a continued intent to be readily identified as a person with a
451 physician's order to withhold life sustaining procedures.

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

455 (4) A physician order made under this section shall be:

456 (a) in writing and on a form approved by the Department of Health;

457 (b) signed by:

458 (i) the declarant;

459 (ii) a person in the declarant's presence and by the declarant's expressed direction;

460 (iii) the parent or legal guardian of a minor; or
461 (iv) if the declarant does not have the ability to give current directions concerning the
462 declarant's care and treatment, the surrogate or class of surrogates with the highest priority
463 under Section 75-2a-1110;
464 (c) dated;
465 (d) signed, completed, and certified by the declarant's licensed health care professional,
466 acting within the scope of practice; and
467 (e) if for a minor, in compliance with Subsection (1)(b).
468 (5) A physician order made under this section takes precedence over a directive made
469 under Section 75-2a-1106, but only to the extent of a conflict.
470 (6) An individual who wishes to revoke a physician order made under this section may
471 do so by:
472 (a) orally informing emergency service personnel;
473 (b) writing "void" across the form, or burning, tearing, or otherwise destroying or
474 defacing the document, bracelet, or other evidence of the physician order, or by asking another
475 person to do the same on the individual's behalf;
476 (c) signing or directing another person to sign a written revocation on the individual's
477 behalf;
478 (d) stating that the individual wishes to revoke the order in the presence of a witness
479 who is age 18 or older; or
480 (e) signing a new physician order.
481 (7) (a) The Department of Health shall adopt rules in accordance with Title 63, Chapter
482 46a, Utah Administrative Rulemaking Act, to:
483 (i) create the forms and systems required by Subsections (2) and (4); and
484 (ii) develop uniform instructions for the form established in Section 75-2a-1116.
485 (b) The Department of Health may assist others with training of health care
486 professionals regarding this chapter.
487 Section 8. Section **75-2a-1106** is enacted to read:
488 **75-2a-1106. Advance health care directive -- Appointment of agent -- Powers of**
489 **agent -- Health care directions.**
490 (1) (a) An individual may make an advance health care directive, in which the

491 individual may:

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

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

494 decision making capacity or chooses not to give directions;

495 (iii) state conditions that must be met before life sustaining treatment may be withheld
496 or withdrawn;

497 (iv) authorize an agent to consent to the individual's participation in medical research;

498 (v) nominate a guardian;

499 (vi) authorize an agent to consent to organ donation;

500 (vii) expand or limit the powers of a health care agent; and

501 (viii) designate the agent's access to the individual's medical records.

502 (b) An advance health care directive may be oral or written.

503 (c) An advance health care directive shall be witnessed by a disinterested individual.

504 The witness may not be:

505 (i) the person who signed the directive on behalf of the declarant;

506 (ii) related to the declarant by blood or marriage;

507 (iii) entitled to any portion of the declarant's estate according to the laws of intestate
508 succession of this state or under any will or codicil of the declarant;

509 (iv) directly financially responsible for the declarant's medical care;

510 (v) a health care provider who is providing care to the declarant or an administrator at a
511 health care facility in which the declarant is receiving care; or

512 (vi) the appointed agent.

513 (d) The witness to an oral advance health care directive shall state the circumstances
514 under which the directive was made.

515 (2) Unless otherwise directed in a health care directive, the authority of an agent:

516 (a) is effective only after a physician makes a determination of incapacity as provided
517 in Section 75-2a-1104;

518 (b) remains in effect during any period of time in which the declarant lacks capacity to
519 appoint an agent or make health care decisions; and

520 (c) ceases to be effective when:

521 (i) a declarant disqualifies an agent or revokes the health care directive;

522 (ii) a health care provider finds that the declarant has health care decision making
523 capacity;

524 (iii) a court issues an order invalidating a health care directive or the application of the
525 health care directive; or

526 (iv) the individual has challenged the determination of incapacity under the provisions
527 of Subsection 75-2a-1104(3).

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

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

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

535 **75-2a-1107. Default surrogates.**

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

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

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

541 (A) over 18 years of age;

542 (B) has health care decision making capacity;

543 (C) is reasonably available; and

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

545 (b) The following classes of the individual's family, in descending order of priority,
546 may act as the individual's surrogate, however an individual in a lower priority class has no
547 rights to direct an individual's care if a member of a higher priority class is able and willing to
548 act as 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) The surrogate shall communicate the surrogate's assumption of authority as
566 promptly as practicable to the members of a class who:
567 (a) have an equal or higher priority and are not acting as surrogate; 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) The 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
628 accordance with Section 75-2c-1109 and made in good 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 advance health care
642 directive and may not revoke the individual's advance 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 either:

658 (a) in writing; or

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

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

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

663 **75-2a-1113. Revocation of directive.**

664 (1) An advance directive may be revoked at any time by the declarant by:

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

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

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

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

670 (i) the declarant; or

671 (ii) a person:

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

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

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

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

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

688 (2) An advance health care directive that conflicts with an earlier advance health care

689 directive revokes the earlier directive to the extent of the conflict.

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

691 **75-2a-1114. Notification to health care provider -- Obligations of health care**

692 **providers -- Liability.**

693 (1) It is the responsibility of the declarant or surrogate, to the extent that the

694 responsibility is not assigned to a health care provider or health care facility by state or federal

695 law, to notify or provide for notification to a health care provider and a health care facility of:

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

701 (2) (a) A health care provider or health care facility is not subject to civil or criminal

702 liability or to claims of unprofessional conduct for failing to act upon a health care directive, a

703 revocation of a health care directive, or a disqualification of a surrogate until the health care

704 provider or health care facility has received an oral directive from an individual or a copy of a

705 written directive or revocation of the health care directive, or the disqualification of the

706 surrogate.

707 (b) A health care provider and health care facility that is notified under Subsection (1)

708 shall include in the individual's medical record:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

736 (B) a health care decision made by a surrogate then authorized to make health care
737 decisions for an individual, to the same extent as if the decision had been made by the
738 individual; and

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

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

772 (ii) the policy was timely communicated to the individual and the individual's
773 surrogate;

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

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

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

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

783 (a) may not require or prohibit the creation or revocation of an advance health care
784 directive as a condition for providing health care; and

785 (b) shall comply with all state and federal laws governing advance health care
786 directives.

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

788 **75-2a-1115. Presumption of validity of directive.**

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

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

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

797 **75-2a-1116. Optional form.**

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

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

801 Utah Advance Health Care Directive

802 (Pursuant to Utah Code Section 75-2a-1116)

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

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

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

807 Part IV: Makes your directive legal.

808 _____

809 My Personal Information

810 Name: _____

811 Street Address: _____

812 City, State, Zip: _____

813 Telephone: _____ Cell Phone: _____

814 Birth date: _____

815 _____

816 Part I: My Agent

817 A. No Agent

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

822 B. My Agent

823 Agent's Name:
824 _____

825 Street Address:
826 _____

827 City, State, Zip:
828 _____

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

830 C. Alternate Agent

831 Alternate Agent's Name:

832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862

Street Address:

City, State, Zip:

Home Phone: () Cell Phone: () Work Phone: ()

D. Agent's Authority

If I cannot make decisions or speak for myself, my agent can make any health care decision I could have made such as:

1. 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 this section or in Part II of this directive.

2. Hire and fire health care providers.

3. Ask questions and get answers from health care providers.

4. 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 or F of this section.

5. Get copies of my medical records.

6. Ask for consultations or second opinions.

E. Other Authority

My agent has the powers below ONLY IF I place a check next to "yes" in 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 congregate facility for long-term placement other than convalescent or recuperative care, unless I agree to be admitted at that time.

F. I wish to limit or expand the powers of my healthcare agent as follows:

863 **G. Nomination of Guardian**

864 Yes _____ No _____ By appointing an agent in this document, I intend to avoid
865 guardianship. If I must have a guardian, I want my agent to be my guardian.

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

867 Yes _____ No _____ I authorize my agent to consent to my participation in medical
868 research or clinical trials, even if I may not benefit from the results.

869 **I. Consent to Organ Donation**

870 Yes _____ No _____ If I have not otherwise agreed to organ donation, my agent may
871 consent to the donation of my organs for the purpose of organ transplantation.

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

873 Yes _____ No _____ My agent may make decisions about health care that are different
874 from the instructions in Part II of this form.

875 _____

876 **Part II: My Health Care Wishes (Living Will)**

877 I want my health care providers to follow the instructions I give them when I am being treated,
878 so long as I can make health care decisions, even if the instructions appear to conflict with
879 these or other advance directives. My health care providers should always provide comfort
880 measures and health care to keep me as comfortable and functional as possible.

881 **Choose one of the following by placing your initials before the numbered statement that**
882 **reflects your wishes.**

883 1. _____ **I choose to let my agent decide.** I have chosen my agent carefully. I have
884 talked with my agent about my health care wishes. I trust my agent to make the health care
885 decisions for me that I would make under the circumstances. My agent may stop care that is
886 prolonging my life only after the conditions checked "yes" below are met.

887 Yes _____ No _____ I have a progressive illness that will cause death.

888 Yes _____ No _____ I am close to death and am unlikely to recover.

889 Yes _____ No _____ I cannot communicate and it is unlikely that my condition will
890 improve.

891 Yes _____ No _____ I do not recognize my friends or family and it is unlikely that my
892 condition will improve.

893 Yes _____ No _____ I am in a persistent vegetative state.

894 2. _____ **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.

897 3. _____ **I choose NOT to receive care for the purpose of prolonging life, including**
898 **food and fluids by tube, antibiotics, CPR, or dialysis used to prolong my life.** I always
899 want comfort care and routine medical care that will keep me as comfortable and functional as
900 possible, even if that care may prolong my life. My health care provider may stop care that is
901 prolonging my life only after the conditions checked "yes" below are met. If I check "no" to all
902 the conditions, my health care provider should not provide care to prolong my life.

903 Yes _____ No _____ I have a progressive illness that will cause death.

904 Yes _____ No _____ I am close to death and am unlikely to recover.

905 Yes _____ No _____ I cannot communicate and it is unlikely that my condition will
906 improve.

907 Yes _____ No _____ I do not recognize my friends or family and it is unlikely that my
908 condition will improve.

909 Yes _____ No _____ I am in a persistent vegetative state.

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

911 **Additional or Other Instructions:**

912 _____
913 _____

914 **Part III: Revoking My Directive**

915 I may revoke this directive by:

916 1. Writing "void" across the form, or burning, tearing, or otherwise destroying or defacing the
917 document or asking another person to do the same on my behalf;

918 2. Signing or directing another person to sign a written revocation on my behalf;

919 3. Stating that I wish to revoke the directive in the presence of a witness who meets the
920 requirements of the witness in Part IV, below, and who will not be appointed as agent or
921 become a default surrogate when the directive is revoked; or

922 4. Signing a new directive. (If you sign more than one Advance Health Care Directive, the
923 most recent one applies.)

924 **Part IV: Making My Directive Legal**

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

927 Date: _____

928 Signature: _____

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

- 930 1. Related to the declarant by blood or marriage;
- 931 2. Entitled to any portion of the declarant's estate according to the laws of intestate succession
- 932 of Utah or under any will or codicil of the declarant;
- 933 3. Directly financially responsible for the declarant's medical care;
- 934 4. A health care provider who is providing care to the declarant or an administrator at a health
- 935 care facility in which the declarant is receiving care; or
- 936 5. The appointed agent or alternate agent.

937 Signature of Witness:
938 _____

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

941 _____
942 _____

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

944 **75-2a-1117. Illegal destruction or falsification of health care directive.**

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

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

948 (b) falsifies, forges, or alters a health care directive or a revocation of the health care
949 directive of another individual.

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

951 (a) the person:

952 (i) falsifies or forges the health care directive of another; or

953 (ii) willfully conceals or withholds personal knowledge of:

954 (A) the revocation of a health care directive; or

955 (B) disqualification of a surrogate; and

956 (b) the actions described in Subsection (2)(a) cause a withholding or withdrawal of life
957 sustaining procedures contrary to the wishes of a declarant resulting in the death of the
958 declarant.

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

960 **75-2a-1118. Health care directive effect on insurance policies.**

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

963 (a) the obligation of any life or medical insurance company regarding any policy of life
964 or medical insurance;

965 (b) the sale, procurement, or issuance of any policy of life or health insurance; or

966 (c) the terms of any existing policy.

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

969 (i) withholding or withdrawing life sustaining procedures; or

970 (ii) following directions in a health care directive executed as provided in this part.

971 (b) Following health care instructions in a health care directive does not constitute
972 legal cause for failing to pay life or health insurance benefits. Death that occurs after following
973 the instructions of an advance health care directive or a surrogate's instructions does not for any
974 purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or
975 an annuity providing a death benefit.

976 (3) (a) The following may not require an individual to execute a directive or to make
977 any particular choices or entries in a directive under this part as a condition for being insured
978 for or receiving health care or life insurance contract services:

979 (i) a health care provider;

980 (ii) a health care facility;

981 (iii) a health maintenance organization;

982 (iv) an insurer issuing disability, health, or life insurance;

983 (v) a self-insured employee welfare or benefit plan;

984 (vi) a nonprofit medical service corporation or mutual nonprofit hospital service
985 corporation; or

986 (v) any other person, firm, or entity.

987 (b) Nothing in this part:

988 (i) may be construed to require an insurer to insure risks otherwise considered by the
989 insurer as not a covered risk;

990 (ii) is intended to impair or supersede any other legal right or legal responsibility which
991 an individual may have to effect the withholding or withdrawal of life sustaining procedures in
992 any lawful manner; or

993 (iii) creates any presumption concerning the intention of an individual who has not
994 executed a health care directive.

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

996 **75-2a-1119. Judicial relief.**

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

999 (1) a patient;

1000 (2) an agent of a patient;

1001 (3) a guardian of a patient;

1002 (4) a default surrogate of a patient;

1003 (5) a health care provider of a patient;

1004 (6) a health care facility providing care for a patient; or

1005 (7) an individual who meets the requirements of Section 75-2a-1107.

1006 Section 22. Section **75-2a-1120** is enacted to read:

1007 **75-2a-1120. Reciprocity.**

1008 Unless otherwise provided in the health care directive:

1009 (1) a health care provider or health care facility may, in good faith, rely on any health
1010 care directive, power of attorney, or similar instrument:

1011 (a) executed in another state; or

1012 (b) executed prior to January 1, 2008, in this state under the provisions of Chapter 2,
1013 Part 11, Personal Choice and Living Will Act; and

1014 (2) the health care directive described in Subsection (1) is presumed to comply with the
1015 requirements of this part.

1016 Section 23. Section **75-2a-1121** is enacted to read:

1017 **75-2a-1121. Effect of act.**

1018 The Advance Health Care Directive Act created in this part does not:
1019 (1) create a presumption concerning the intention of an individual who has not made or
1020 who has revoked an advance health care directive;
1021 (2) authorize mercy killing, assisted suicide, or euthanasia; and
1022 (3) authorize the provision, withholding, or withdrawal of health care, to the extent
1023 prohibited by the laws of this state.

1024 Section 24. Section **75-2a-1122** is enacted to read:

1025 **75-2a-1122. Pregnancy.**

1026 A health care directive that provides for the withholding or withdrawal of life
1027 sustaining procedures has no force during the course of a declarant's pregnancy.

1028 Section 25. Section **75-2a-1123** is enacted to read:

1029 **75-2a-1123. Provisions cumulative with existing law.**

1030 The provisions of this chapter are cumulative with existing law regarding an
1031 individual's right to consent or refuse to consent to medical treatment and do not impair any
1032 existing rights or responsibilities that a health care provider, an individual, including a minor or
1033 incapacitated individual, or an individual's family or surrogate may have in regard to the
1034 provision, withholding or withdrawal of life sustaining procedures under the common law or
1035 statutes of the state.

1036 Section 26. Section **76-5-111** is amended to read:

1037 **76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.**

1038 (1) As used in this section:

1039 (a) "Abandonment" means a knowing or intentional action or inaction, including
1040 desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the
1041 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or
1042 medical or other health care.

1043 (b) "Abuse" means:

1044 (i) attempting to cause harm, intentionally or knowingly causing harm, or intentionally
1045 or knowingly placing another in fear of imminent harm;

1046 (ii) causing physical injury by knowing or intentional acts or omissions;

1047 (iii) unreasonable or inappropriate use of physical restraint, medication, or isolation
1048 that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's

1049 orders or used as an unauthorized substitute for treatment, unless that conduct furthers the
1050 health and safety of the adult; or

1051 (iv) deprivation of life-sustaining treatment, except:

1052 (A) as provided in Title 75, Chapter [2] 2a, Part 11, [~~Personal Choice and Living Will~~]
1053 Advance Health Care Directive Act; or

1054 (B) when informed consent, as defined in this section, has been obtained.

1055 (c) "Business relationship" means a relationship between two or more individuals or
1056 entities where there exists an oral or written agreement for the exchange of goods or services.

1057 (d) "Caretaker" means any person, entity, corporation, or public institution that
1058 assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing,
1059 supervision, medical or other health care, or other necessities. "Caretaker" includes a relative
1060 by blood or marriage, a household member, a person who is employed or who provides
1061 volunteer work, or a person who contracts or is under court order to provide care.

1062 (e) "Deception" means:

1063 (i) a misrepresentation or concealment:

1064 (A) of a material fact relating to services rendered, disposition of property, or use of
1065 property intended to benefit a vulnerable adult;

1066 (B) of the terms of a contract or agreement entered into with a vulnerable adult; or

1067 (C) relating to the existing or preexisting condition of any property involved in a
1068 contract or agreement entered into with a vulnerable adult; or

1069 (ii) the use or employment of any misrepresentation, false pretense, or false promise in
1070 order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.

1071 (f) "Elder adult" means a person 65 years of age or older.

1072 (g) "Endeavor" means to attempt or try.

1073 (h) "Exploitation" means the offense described in Subsection (4).

1074 (i) "Harm" means pain, mental anguish, emotional distress, hurt, physical or
1075 psychological damage, physical injury, suffering, or distress inflicted knowingly or
1076 intentionally.

1077 (j) "Informed consent" means:

1078 (i) a written expression by the person or authorized by the person, stating that the
1079 person fully understands the potential risks and benefits of the withdrawal of food, water,

1080 medication, medical services, shelter, cooling, heating, or other services necessary to maintain
1081 minimum physical or mental health, and that the person desires that the services be withdrawn.
1082 A written expression is valid only if the person is of sound mind when the consent is given, and
1083 the consent is witnessed by at least two individuals who do not benefit from the withdrawal of
1084 services; or

1085 (ii) consent to withdraw food, water, medication, medical services, shelter, cooling,
1086 heating, or other services necessary to maintain minimum physical or mental health, as
1087 permitted by court order.

1088 (k) "Intimidation" means communication conveyed through verbal or nonverbal
1089 conduct which threatens deprivation of money, food, clothing, medicine, shelter, social
1090 interaction, supervision, health care, or companionship, or which threatens isolation or harm.

1091 (l) (i) "Isolation" means knowingly or intentionally preventing a vulnerable adult from
1092 having contact with another person by:

1093 (A) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,
1094 contrary to the express wishes of the vulnerable adult, including communicating to a visitor
1095 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,
1096 knowing that communication to be false;

1097 (B) physically restraining the vulnerable adult in order to prevent the vulnerable adult
1098 from meeting with a visitor; or

1099 (C) making false or misleading statements to the vulnerable adult in order to induce the
1100 vulnerable adult to refuse to receive communication from visitors or other family members.

1101 (ii) The term "isolation" does not include an act intended to protect the physical or
1102 mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or
1103 instructions of a physician or other professional advisor of the vulnerable adult.

1104 (m) "Lacks capacity to consent" means an impairment by reason of mental illness,
1105 developmental disability, organic brain disorder, physical illness or disability, chronic use of
1106 drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a
1107 vulnerable adult lacks sufficient understanding of the nature or consequences of decisions
1108 concerning the adult's person or property.

1109 (n) "Neglect" means:

1110 (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal

1111 care, or dental or other health care, or failure to provide protection from health and safety
1112 hazards or maltreatment;

1113 (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and
1114 with the degree of care that a reasonable person in a like position would exercise;

1115 (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed
1116 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
1117 heating, or other services necessary to maintain the vulnerable adult's well being;

1118 (iv) intentional failure by a caretaker to carry out a prescribed treatment plan that
1119 results or could result in physical injury or physical harm; or

1120 (v) abandonment by a caretaker.

1121 (o) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic
1122 conduct, to the extent that the tissue must undergo a healing process in order to be restored to a
1123 sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot
1124 be restored to a sound and healthy condition. "Physical injury" includes skin bruising, a
1125 dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding,
1126 malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling,
1127 injury to any internal organ, or any other physical condition that imperils the health or welfare
1128 of the vulnerable adult and is not a serious physical injury as defined in this section.

1129 (p) "Position of trust and confidence" means the position of a person who:

1130 (i) is a parent, spouse, adult child, or other relative by blood or marriage of a vulnerable
1131 adult;

1132 (ii) is a joint tenant or tenant in common with a vulnerable adult;

1133 (iii) has a legal or fiduciary relationship with a vulnerable adult, including a
1134 court-appointed or voluntary guardian, trustee, attorney, or conservator; or

1135 (iv) is a caretaker of a vulnerable adult.

1136 (q) "Serious physical injury" means any physical injury or set of physical injuries that:

1137 (i) seriously impairs a vulnerable adult's health;

1138 (ii) was caused by use of a dangerous weapon as defined in Section 76-1-601;

1139 (iii) involves physical torture or causes serious emotional harm to a vulnerable adult; or

1140 (iv) creates a reasonable risk of death.

1141 (r) "Sexual exploitation" means the production, distribution, possession, or possession

1142 with the intent to distribute material or a live performance depicting a nude or partially nude
1143 vulnerable adult who lacks the capacity to consent, for the purpose of sexual arousal of any
1144 person.

1145 (s) "Undue influence" occurs when a person uses the person's role, relationship, or
1146 power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear
1147 of a vulnerable adult, or uses the person's role, relationship, or power to gain control
1148 deceptively over the decision making of the vulnerable adult.

1149 (t) "Vulnerable adult" means an elder adult, or an adult 18 years of age or older who
1150 has a mental or physical impairment which substantially affects that person's ability to:

- 1151 (i) provide personal protection;
- 1152 (ii) provide necessities such as food, shelter, clothing, or medical or other health care;
- 1153 (iii) obtain services necessary for health, safety, or welfare;
- 1154 (iv) carry out the activities of daily living;
- 1155 (v) manage the adult's own resources; or
- 1156 (vi) comprehend the nature and consequences of remaining in a situation of abuse,
1157 neglect, or exploitation.

1158 (2) Under any circumstances likely to produce death or serious physical injury, any
1159 person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or,
1160 having the care or custody of a vulnerable adult, causes or permits that adult's person or health
1161 to be injured, or causes or permits a vulnerable adult to be placed in a situation where the
1162 adult's person or health is endangered, is guilty of the offense of aggravated abuse of a
1163 vulnerable adult as follows:

- 1164 (a) if done intentionally or knowingly, the offense is a second degree felony;
- 1165 (b) if done recklessly, the offense is third degree felony; and
- 1166 (c) if done with criminal negligence, the offense is a class A misdemeanor.

1167 (3) Under circumstances other than those likely to produce death or serious physical
1168 injury any person, including a caretaker, who causes a vulnerable adult to suffer harm, abuse,
1169 or neglect; or, having the care or custody of a vulnerable adult, causes or permits that adult's
1170 person or health to be injured, abused, or neglected, or causes or permits a vulnerable adult to
1171 be placed in a situation where the adult's person or health is endangered, is guilty of the offense
1172 of abuse of a vulnerable adult as follows:

- 1173 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
- 1174 (b) if done recklessly, the offense is a class B misdemeanor; and
- 1175 (c) if done with criminal negligence, the offense is a class C misdemeanor.
- 1176 (4) (a) A person commits the offense of exploitation of a vulnerable adult when the
- 1177 person:
- 1178 (i) is in a position of trust and confidence, or has a business relationship, with the
- 1179 vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception
- 1180 or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds,
- 1181 credit, assets, or other property with the intent to temporarily or permanently deprive the
- 1182 vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of
- 1183 someone other than the vulnerable adult;
- 1184 (ii) knows or should know that the vulnerable adult lacks the capacity to consent, and
- 1185 obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or
- 1186 endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to
- 1187 temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of his
- 1188 property for the benefit of someone other than the vulnerable adult;
- 1189 (iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the
- 1190 profit or advantage of someone other than the vulnerable adult;
- 1191 (iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship
- 1192 for the profit or advantage of someone other than the vulnerable adult;
- 1193 (v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or
- 1194 furtherance of any criminal activity; or
- 1195 (vi) commits sexual exploitation of a vulnerable adult.
- 1196 (b) A person is guilty of the offense of exploitation of a vulnerable adult as follows:
- 1197 (i) if done intentionally or knowingly and the aggregate value of the resources used or
- 1198 the profit made is or exceeds \$5,000, the offense is a second degree felony;
- 1199 (ii) if done intentionally or knowingly and the aggregate value of the resources used or
- 1200 the profit made is less than \$5,000 or cannot be determined, the offense is a third degree
- 1201 felony;
- 1202 (iii) if done recklessly, the offense is a class A misdemeanor; or
- 1203 (iv) if done with criminal negligence, the offense is a class B misdemeanor.

1204 (5) It does not constitute a defense to a prosecution for any violation of this section that
1205 the accused did not know the age of the victim.

1206 (6) An adult is not considered abused, neglected, or a vulnerable adult for the reason
1207 that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of
1208 medical care.

1209 **Section 27. Repealer.**

1210 This bill repeals:

1211 **Section 75-2-1101, Short title.**

1212 **Section 75-2-1102, Intent statement.**

1213 **Section 75-2-1103, Definitions.**

1214 **Section 75-2-1104, Directive for medical services.**

1215 **Section 75-2-1105, Directive for medical services after injury or illness is incurred.**

1216 **Section 75-2-1105.5, Emergency medical services -- Directive not to resuscitate.**

1217 **Section 75-2-1106, Special power of attorney.**

1218 **Section 75-2-1107, Medical services for terminal persons without a directive.**

1219 **Section 75-2-1108, Current desires of declarant.**

1220 **Section 75-2-1109, Pregnancy.**

1221 **Section 75-2-1110, Notification to physician.**

1222 **Section 75-2-1111, Revocation of directive.**

1223 **Section 75-2-1112, Physician compliance with directive.**

1224 **Section 75-2-1113, Presumption of validity of directive.**

1225 **Section 75-2-1114, Physician liability for compliance with directive.**

1226 **Section 75-2-1115, Illegal destruction or falsification of directive.**

1227 **Section 75-2-1116, Compliance with directive is not suicide.**

1228 **Section 75-2-1117, No insurance or health care provider may require a directive.**

1229 **Section 75-2-1118, Directive not mercy killing.**

1230 **Section 75-2-1119, Reciprocity.**

1231 **Section 28. Effective date.**

1232 This bill takes effect on January 1, 2008.

S.B. 75 2nd Sub. (Salmon) - Advance Health Care Directive Act

Fiscal Note

2007 General Session
State of Utah

State Impact

Enactment of this bill will require an initial FY 2008 appropriation to the Department of Health for \$9,500 General Fund, including \$6,500 one-time start-up costs and an ongoing appropriation of \$3,000 for ongoing training and travel costs.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$3,000	\$3,000	\$0	\$0	\$0
General Fund, One-Time	\$0	\$6,500	\$0	\$0	\$0	\$0
Total	\$0	\$9,500	\$3,000	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.