

1                                   **ADVANCE HEALTH CARE DIRECTIVE**

2   **AMENDMENTS**

3   2008 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Allen M. Christensen**

6   House Sponsor: Steven R. Mascaro

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8                                   **LONG TITLE**

9                                   **General Description:**

10                                   This bill amends the Advance Health Care Directive Act.

11                                   **Highlighted Provisions:**

12                                   This bill:

- 13                                   ▶ defines terms;
- 14                                   ▶ describes the standard to be used by a surrogate in making a health care decision on
- 15 behalf of a person who no longer has capacity to make the person's own health care
- 16 decisions;
- 17                                   ▶ replaces the physician order for life sustaining treatment form with a life with dignity
- 18 order and establishes procedures and requirements relating to the order;
- 19                                   ▶ describes who may witness the making or revocation of an advance health care
- 20 directive;
- 21                                   ▶ modifies provisions related to default surrogates, including:
  - 22                                   • the order of priority among potential surrogates; and
  - 23                                   • witnessing the disqualification of a default surrogate;
- 24                                   ▶ modifies the optional form for an advance health care directive;
- 25                                   ▶ describes the reciprocal applicability of an advance health care directive made before
- 26 the effective date of this bill; and
- 27                                   ▶ makes technical changes.

28                                   **Monies Appropriated in this Bill:**

29                                   None

30 **Other Special Clauses:**

31           None

32 **Utah Code Sections Affected:**

33 **AMENDS:**

34           **75-2a-102**, as enacted by Laws of Utah 2007, Chapter 31

35           **75-2a-103**, as enacted by Laws of Utah 2007, Chapter 31

36           **75-2a-104**, as enacted by Laws of Utah 2007, Chapter 31

37           **75-2a-105**, as enacted by Laws of Utah 2007, Chapter 31

38           **75-2a-107**, as enacted by Laws of Utah 2007, Chapter 31

39           **75-2a-108**, as enacted by Laws of Utah 2007, Chapter 31

40           **75-2a-109**, as enacted by Laws of Utah 2007, Chapter 31

41           **75-2a-110**, as enacted by Laws of Utah 2007, Chapter 31

42           **75-2a-111**, as enacted by Laws of Utah 2007, Chapter 31

43           **75-2a-112**, as enacted by Laws of Utah 2007, Chapter 31

44           **75-2a-113**, as enacted by Laws of Utah 2007, Chapter 31

45           **75-2a-114**, as enacted by Laws of Utah 2007, Chapter 31

46           **75-2a-115**, as enacted by Laws of Utah 2007, Chapter 31

47           **75-2a-117**, as enacted by Laws of Utah 2007, Chapter 31

48           **75-2a-118**, as enacted by Laws of Utah 2007, Chapter 31

49           **75-2a-119**, as enacted by Laws of Utah 2007, Chapter 31

50           **75-2a-121**, as enacted by Laws of Utah 2007, Chapter 31

51           **75-2a-122**, as enacted by Laws of Utah 2007, Chapter 31

52           **75-2a-123**, as enacted by Laws of Utah 2007, Chapter 31

53           **75-2a-124**, as enacted by Laws of Utah 2007, Chapter 31

54 **ENACTS:**

55           **75-2a-125**, Utah Code Annotated 1953

56 **REPEALS AND REENACTS:**

57           **75-2a-106**, as enacted by Laws of Utah 2007, Chapter 31

58

59 *Be it enacted by the Legislature of the state of Utah:*60 Section 1. Section **75-2a-102** is amended to read:61 **75-2a-102. Intent statement.**

62 (1) The Legislature finds:

63 (a) developments in health care technology make possible many alternatives for treating  
64 medical conditions and make possible the unnatural prolongation of life;65 (b) [~~individuals~~] an adult should have the clear legal choice to:66 (i) accept or reject health care, even if rejecting health care will result in death sooner  
67 than death would be expected to occur if rejected health care were started or continued;

68 (ii) be spared unwanted procedures; and

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

70 (c) Utah law should:

71 (i) provide [~~individuals~~] an adult with a legal tool to designate a health care agent and  
72 express preferences about health care options to go into effect only after the [~~individual~~] adult  
73 loses the ability to make or communicate health care decisions, including decisions about  
74 end-of-life care; and75 (ii) promote [~~a~~] an advance health care directive system that can be administered  
76 effectively within the health care system;77 (d) surrogate decisions made on behalf of [~~a person~~] an adult who previously had  
78 capacity to make health care decisions, but who has lost health care decision making capacity  
79 should be based on:80 (i) input from the incapacitated [~~person~~] adult, to the extent possible under the  
81 circumstances;82 (ii) specific preferences expressed by the [~~individual~~] adult prior to the loss of health  
83 care decision making capacity;84 (iii) the surrogate's understanding of the [~~individual's~~] adult's health care preferences;  
85 and

86 (iv) the surrogate's understanding of what the [~~individual~~] adult would have wanted  
87 under the circumstances; and

88 (e) surrogate decisions made on behalf of an [~~individual~~] adult who has never had health  
89 care decision making capacity should be made on the basis of the [~~individual's~~] adult's best  
90 interest.

91 (2) In recognition of the dignity and privacy that [~~all individuals are~~] each adult is  
92 entitled to expect, and to protect the right of an [~~individual~~] adult to refuse to be treated  
93 without the [~~individual's~~] adult's consent, the Legislature declares that this state recognizes the  
94 right to make binding advance health care directives directing health care providers to:

95 (a) provide life sustaining [~~or life supporting~~] medically indicated health care;

96 (b) withhold or withdraw health care; or

97 (c) provide health care only to the extent set forth in [~~a~~] an advance health care  
98 directive.

99 Section 2. Section **75-2a-103** is amended to read:

100 **75-2a-103. Definitions.**

101 As used in this chapter:

102 (1) "Adult" means a person who is:

103 (a) at least 18 years of age; or

104 (b) an emancipated minor.

105 (2) "Advance health care directive":

106 (a) includes:

107 (i) a designation of an agent to make health care decisions for an adult when the adult  
108 cannot make or communicate health care decisions; or

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

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

111 (i) a written document, voluntarily executed by an adult in accordance with the  
112 requirements of this chapter; or

113 (ii) a witnessed oral statement, made in accordance with the requirements of this

114 chapter; and

115 (c) does not include a life with dignity order.

116 ~~[(1)]~~ (3) "Agent" means a person designated in an advance health care directive to make  
117 health care decisions for the declarant.

118 (4) "APRN" means a person who is:

119 (a) certified or licensed as an advance practice registered nurse under Subsection  
120 58-31b-301(2)(d);

121 (b) an independent practitioner;

122 (c) acting under a consultation and referral plan with a physician; and

123 (d) acting within the scope of practice for that person, as provided by law, rule, and  
124 specialized certification and training in that person's area of practice.

125 ~~[(2)]~~ (5) "Best interest" means that the benefits to the [individual] person resulting from  
126 a treatment outweigh the burdens to the [individual] person resulting from the treatment, taking  
127 into account:

128 (a) the effect of the treatment on the physical, emotional, and cognitive functions of the  
129 [individual] person;

130 (b) the degree of physical pain or discomfort caused to the [individual] person by the  
131 treatment or the withholding or withdrawal of treatment;

132 (c) the degree to which the [individual's] person's medical condition, the treatment, or  
133 the withholding or withdrawal of treatment, result in a severe and continuing impairment of the  
134 dignity of the [individual] person by subjecting the [individual] person to humiliation and  
135 dependency;

136 (d) the effect of the treatment on the life expectancy of the [individual] person;

137 (e) the prognosis of the [individual] person for recovery with and without the treatment;

138 (f) the risks, side effects, and benefits of the treatment, or the withholding or  
139 withdrawal of treatment; and

140 (g) the religious beliefs and basic values of the [individual] person receiving treatment,  
141 to the extent these may assist the decision maker in determining the best interest.

142           ~~[(3)]~~ (6) "Capacity to appoint an agent" means that the ~~[individual]~~ adult understands  
143 the consequences of appointing a particular person as agent.

144           ~~[(4)]~~ (7) "Declarant" means an ~~[individual]~~ adult who has completed and signed or  
145 directed the signing of [~~a~~] an advance health care directive.

146           ~~[(5)]~~ (8) "Default surrogate ~~[decision-maker]~~" means the ~~[person]~~ adult who may make  
147 decisions for an individual when either:

148           (a) an agent or guardian has not been appointed; or

149           (b) an agent is not able [~~or~~], available, or willing to make decisions for [~~a declarant~~] an  
150 adult.

151           (9) "Emergency medical services provider" means a person who is licensed, designated,  
152 or certified under Title 26, Chapter 8a, Utah Emergency Medical Services System Act.

153           ~~[(6)]~~ (10) "Generally accepted health care standards":

154           (a) is defined only for the purpose of:

155           (i) this chapter and does not define the standard of care for any other purpose under  
156 Utah law; and

157           (ii) enabling health care providers to interpret the statutory form set forth in Section  
158 75-2a-117; and

159           (b) means the standard of care that justifies a provider in declining to provide life  
160 sustaining [~~or life supporting~~] care because the proposed life sustaining care:

161           (i) will not prevent or reduce the deterioration in the health or functional status of [~~an~~  
162 ~~individual~~] a person;

163           (ii) will not prevent the impending death of [~~an individual~~] a person; or

164           (iii) will impose more burden on the [~~individual~~] person than any expected benefit to the  
165 [~~individual~~] person.

166           ~~[(7)]~~ "Guardian" means a court-appointed guardian.].

167           ~~[(8)]~~ (11) "Health care" means any care, treatment, service, or procedure to improve,  
168 maintain, diagnose, or otherwise affect [~~an individual's~~] a person's physical or mental condition.

169           ~~[(9)]~~ (12) "Health care decision":

170 (a) means a decision about an [~~individual's~~] adult's health care made by [~~the individual~~  
171 ~~or the individual's surrogate~~], or on behalf of, an adult, that is communicated to a health care  
172 provider;

173 (b) includes:

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

175 (ii) approval or disapproval of diagnostic tests, procedures, programs of medication,  
176 and orders not to resuscitate; and

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

179 (c) does not include decisions about [~~the individual's~~] an adult's financial affairs or social  
180 interactions other than as indirectly affected by the health care decision.

181 [~~(10)~~] (13) "Health care decision making capacity" means an [~~individual's~~] adult's ability  
182 to make an informed decision about receiving or refusing health care, including:

183 (a) the ability to understand the nature, extent, or probable consequences of [~~the~~] health  
184 status and health care alternatives;

185 (b) the ability to make a rational evaluation of the burdens, risks, benefits, and  
186 alternatives [~~to the proposed~~] of accepting or rejecting health care; and

187 (c) the ability to communicate a decision.

188 [~~(11) "Health care directive":~~]

189 [~~(a) includes:~~]

190 [~~(i) a designation of an agent to make health care decisions for an individual when the~~  
191 ~~individual cannot make or communicate health care decisions; or]~~

192 [~~(ii) an expression of preferences about health care decisions; and]~~

193 [~~(b) may take one of the following forms:~~]

194 [~~(i) a written document, voluntarily executed by an individual in accordance with the~~  
195 ~~requirements of this chapter; or]~~

196 [~~(ii) a witnessed oral statement, made by an individual, in accordance with the~~  
197 ~~requirements of this chapter.]~~

198 ~~[(12)]~~ (14) "Health care facility" means:

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

201 (b) private offices of physicians, dentists, and other health care providers licensed to  
202 provide health care under Title 58, Occupations and Professions.

203 ~~[(13)]~~ (15) "Health care provider" is as defined in Section 78-14-3, except that it does  
204 not include an emergency medical services provider.

205 ~~[(14) "Individual":]~~

206 ~~[(a) means:]~~

207 ~~[(i) a person 18 years of age or older; or]~~

208 ~~[(ii) an emancipated minor as defined in Sections 78-3a-1001 to 78-3a-1105; and]~~

209 ~~[(b) includes:]~~

210 ~~[(i) a declarant; and]~~

211 ~~[(ii) a person who has not completed an advance health care directive.]~~

212 (16) (a) "Life sustaining care" means any medical intervention, including procedures,  
213 administration of medication, or use of a medical device, that maintains life by sustaining,  
214 restoring, or supplanting a vital function.

215 (b) "Life sustaining care" does not include care provided for the purpose of keeping a  
216 person comfortable.

217 (17) "Life with dignity order" means an order, designated by the Department of Health  
218 under Section 75-2a-106(5)(a), that gives direction to health care providers, health care  
219 facilities, and emergency medical services providers regarding the specific health care decisions  
220 of the person to whom the order relates.

221 (18) "Minor" means a person who:

222 (a) is under 18 years of age; and

223 (b) is not an emancipated minor.

224 (19) "Physician" means a physician and surgeon or osteopathic surgeon licensed under  
225 Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical



226 Practice Act.

227 [(15)] (20) "Reasonably available" means:

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

229 (b) willing and able to act in a timely manner considering the urgency of the [~~individual's~~  
230 ~~health care needs~~] circumstances.

231 (21) "Substituted judgment" means the standard to be applied by a surrogate when  
232 making a health care decision for an adult who previously had the capacity to make health care  
233 decisions, which requires the surrogate to consider:

234 (a) specific preferences expressed by the adult:

235 (i) when the adult had the capacity to make health care decisions; and

236 (ii) at the time the decision is being made;

237 (b) the surrogate's understanding of the adult's health care preferences;

238 (c) the surrogate's understanding of what the adult would have wanted under the  
239 circumstances; and

240 (d) to the extent that the preferences described in Subsections (21)(a) through (c) are  
241 unknown, the best interest of the adult.

242 [(16)] (22) "Surrogate" means a health care decision maker who is:

243 (a) an appointed agent;

244 (b) a default surrogate [~~decision maker~~] under the provisions of Section 75-2a-108; or

245 (c) a [~~court-appointed~~] guardian.

246 Section 3. Section **75-2a-104** is amended to read:

247 **75-2a-104. Capacity to make health care decisions -- Presumption -- Overcoming**  
248 **presumption.**

249 (1) An [~~individual~~] adult is presumed to have:

250 (a) health care decision making capacity; and

251 (b) capacity to make or revoke [~~a~~] an advance health care directive.

252 (2) To overcome the presumption of capacity, a physician or an APRN who has  
253 personally examined the [~~individual~~] adult and assessed the [~~individual's~~] adult's health care

254 decision making capacity must:

255 (a) find that the [individual] adult lacks health care decision making capacity;

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

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

259 (i) the [individual] adult;

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

262 (iii) if the [individual] adult has a surrogate, any known surrogate.

263 (3) (a) If a physician or APRN finds that an [individual] adult lacks health care decision  
264 making capacity in accordance with Subsection (2), the [individual] adult may at any time,  
265 challenge the finding by:

266 (i) submitting to a health care provider a written notice stating that the [individual] adult  
267 disagrees with the physician's finding; or

268 (ii) orally informing the health care provider that the [individual] adult disagrees with  
269 the [physician's] finding.

270 (b) A health care provider who is informed of a challenge [~~pursuant to~~] under  
271 Subsection (3)(a), shall, if the adult has a surrogate, promptly inform [~~an individual, if any, who~~  
272 ~~is serving as~~] the surrogate of the [individual's] adult's challenge.

273 (c) A surrogate informed of a challenge to a finding under this section, or the  
274 [individual] adult if no surrogate is acting on the [individual's] adult's behalf, shall inform the  
275 following of the [individual's] adult's challenge:

276 (i) any other health care providers involved in the [individual's] adult's care; and

277 (ii) the health care facility, if any, in which the [individual] adult is receiving care.

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

280 (d) Unless otherwise ordered by a court, a finding by a physician, under Subsection (2),  
281 that the adult lacks health care decision making capacity, is not in effect if the adult challenges

282 the finding under Subsection (3)(a).

283 (e) If an [individual] adult does not challenge [a] the finding described in Subsection  
284 (2), the health care provider and health care facility may rely on a surrogate, pursuant to the  
285 provisions of this chapter, to make health care decisions for the [individual] adult.

286 (4) A health care provider or health care facility [~~providing care to the individual~~] that  
287 relies on a surrogate to make decisions on behalf of an [individual] adult has an ongoing  
288 obligation to consider whether the [individual] adult continues to lack health care decision  
289 making capacity.

290 (5) If at any time a health care provider finds, based on an examination and assessment,  
291 that the [individual] adult has regained health care decision making capacity, the health care  
292 provider shall record the results of the assessment in the [individual's] adult's medical record,  
293 and the [individual] adult can direct [his] the adult's own health care.

294 Section 4. Section **75-2a-105** is amended to read:

295 **75-2a-105. Capacity to complete an advance health care directive.**

296 (1) An [individual] adult is presumed to have the capacity to complete an advance  
297 health care directive.

298 (2) An [individual] adult who is found to lack health care decision making capacity  
299 under the provisions of Section 75-2a-104:

300 (a) lacks the capacity to give an advance health care directive, including Part II of the  
301 form created in Section 75-2a-117, or any other substantially similar form expressing a health  
302 care preference; and

303 (b) may retain the capacity to appoint an agent and complete Part I of the form created  
304 in Section 75-2a-117.

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

308 (a) whether the [individual] adult has expressed over time an intent to appoint the same  
309 person as agent;

310 (b) whether the choice of agent is consistent with past relationships and patterns of  
311 behavior between the ~~[individual]~~ adult and the prospective agent, or, if inconsistent, whether  
312 there is a reasonable justification for the change; and

313 (c) whether the ~~[individual's]~~ adult's expression of the intent to appoint the agent occurs  
314 at times when, or in settings where, the ~~[individual]~~ adult has the greatest ability to make and  
315 communicate decisions.

316 Section 5. Section **75-2a-106** is repealed and reenacted to read:

317 **75-2a-106. Emergency medical services -- Life with dignity order.**

318 (1) A life with dignity order may be created by or on behalf of a person as described in  
319 this section.

320 (2) A life with dignity order shall, in consultation with the person authorized to consent  
321 to the order pursuant to this section, be prepared by:

322 (a) the physician or APRN of the person to whom the life with dignity order relates; or

323 (b) a health care provider who:

324 (i) is acting under the supervision of a person described in Subsection (2)(a); and

325 (ii) is:

326 (A) a nurse, licensed under Title 58, Chapter 31b, Nurse Practice Act;

327 (B) a physician assistant, licensed under Title 58, Chapter 70a, Physician Assistant Act;

328 (C) a mental health professional, licensed under Title 58, Chapter 60, Mental Health

329 Professional Practice Act; or

330 (D) another health care provider, designated by rule as described in Subsection (10).

331 (3) A life with dignity order shall be signed:

332 (a) personally, by the physician or APRN of the person to whom the life with dignity  
333 order relates; and

334 (b) (i) if the person to whom the life with dignity order relates is an adult with health  
335 care decision making capacity, by:

336 (A) the person; or

337 (B) an adult who is directed by the person to sign the life with dignity order on behalf of

338 the person;

339 (ii) if the person to whom the life with dignity order relates is an adult who lacks health  
340 care decision making capacity, by:

341 (A) the surrogate with the highest priority under Section 75-2a-111;

342 (B) the majority of the class of surrogates with the highest priority under Section  
343 75-2a-111; or

344 (C) a person directed to sign the order by, and on behalf of, the persons described in  
345 Subsection (3)(b)(ii)(A) or (B); or

346 (iii) if the person to whom the life with dignity order relates is a minor, by a parent or  
347 guardian of the minor.

348 (4) If a life with dignity order relates to a minor and directs that life sustaining treatment  
349 be withheld or withdrawn from the minor, the order shall include a certification by two  
350 physicians that, in their clinical judgment, an order to withhold or withdraw life sustaining  
351 treatment is in the best interest of the minor.

352 (5) A life with dignity order:

353 (a) shall be in writing, on a form approved by the Department of Health;

354 (b) shall state the date on which the order was made;

355 (c) may specify the level of life sustaining care to be provided to the person to whom  
356 the order relates; and

357 (d) may direct that life sustaining care be withheld or withdrawn from the person to  
358 whom the order relates.

359 (6) A health care provider or emergency medical service provider, licensed or certified  
360 under Title 26, Chapter 8a, Utah Emergency Medical Services System Act, is immune from civil  
361 or criminal liability, and is not subject to discipline for unprofessional conduct, for:

362 (a) complying with a life with dignity order in good faith; or

363 (b) providing life sustaining treatment to a person when a life with dignity order directs  
364 that the life sustaining treatment be withheld or withdrawn.

365 (7) To the extent that the provisions of a life with dignity order described in this section

366 conflict with the provisions of an advance health care directive made under Section 75-2a-107,  
367 the provisions of the life with dignity order take precedence.

368 (8) An adult, or a parent or guardian of a minor, may revoke a life with dignity order  
369 by:

370 (a) orally informing emergency service personnel;

371 (b) writing "void" across the form;

372 (c) burning, tearing, or otherwise destroying or defacing:

373 (i) the form; or

374 (ii) a bracelet or other evidence of the life with dignity order;

375 (d) asking another adult to take the action described in this Subsection (8) on the  
376 person's behalf;

377 (e) signing or directing another adult to sign a written revocation on the person's behalf;

378 (f) stating, in the presence of an adult witness, that the person wishes to revoke the  
379 order; or

380 (g) completing a new life with dignity order.

381 (9) (a) Except as provided in Subsection (9)(c), a surrogate for an adult who lacks  
382 health care decision making capacity may only revoke a life with dignity order if the revocation  
383 is consistent with the substituted judgment standard.

384 (b) Except as provided in Subsection (9)(c), a surrogate who has authority under this  
385 section to sign a life with dignity order may revoke a life with dignity order, in accordance with  
386 Subsection (9)(a), by:

387 (i) signing a written revocation of the life with dignity order; or

388 (ii) completing and signing a new life with dignity order.

389 (c) A surrogate may not revoke a life with dignity order during the period of time  
390 beginning when an emergency service provider is contacted for assistance, and ending when the  
391 emergency ends.

392 (10) (a) The Department of Health shall adopt rules, in accordance with Title 63,  
393 Chapter 46a, Utah Administrative Rulemaking Act, to:

- 394 (i) create the forms and systems described in this section; and
- 395 (ii) develop uniform instructions for the form established in Section 75-2a-117.
- 396 (b) The Department of Health may adopt rules, in accordance with Title 63, Chapter
- 397 46a, Utah Administrative Rulemaking Act, to designate health care professionals, in addition to
- 398 those described in Subsection (2)(b)(ii), who may prepare a life with dignity order.
- 399 (c) The Department of Health may assist others with training of health care
- 400 professionals regarding this chapter.

Section 6. Section **75-2a-107** is amended to read:

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

(1) (a) An [~~individual~~] adult may make an advance health care directive[;] in which the [~~individual~~] adult may:

- 406 (i) appoint a health care agent or choose not to appoint a health care agent;
- 407 (ii) give directions for the care of the [~~individual~~] adult after the [~~individual~~] adult loses
- 408 health care decision making capacity [~~or chooses~~];
- 409 (iii) choose not to give directions;
- 410 [~~(iii)~~] (iv) state conditions that must be met before life sustaining treatment may be
- 411 withheld or withdrawn;
- 412 [~~(iv)~~] (v) authorize an agent to consent to the [~~individual's~~] adult's participation in
- 413 medical research;
- 414 [~~(v)~~] (vi) nominate a guardian;
- 415 [~~(vi)~~] (vii) authorize an agent to consent to organ donation;
- 416 [~~(vii)~~] (viii) expand or limit the powers of a health care agent; and
- 417 [~~(viii)~~] (ix) designate the agent's access to the [~~individual's~~] adult's medical records.

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

(c) An advance health care directive shall be witnessed by a disinterested [~~individual~~] adult. The witness may not be:

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

422 (ii) related to the declarant by blood or marriage;  
 423 (iii) entitled to any portion of the declarant's estate according to the laws of intestate  
 424 succession of this state or under any will or codicil of the declarant;

425 (iv) the beneficiary of any of the following that are held, owned, made, or established  
 426 by, or on behalf of, the declarant:

427 (A) a life insurance policy;

428 (B) a trust;

429 (C) a qualified plan;

430 (D) a pay on death account; or

431 (E) a transfer on death deed;

432 (v) entitled to benefit financially upon the death of the declarant;

433 (vi) entitled to a right to, or interest in, real or personal property upon the death of the  
 434 declarant;

435 [~~(iv)~~] (vii) directly financially responsible for the declarant's medical care;

436 [~~(v)~~] (viii) a health care provider who is;

437 (A) providing care to the declarant; or

438 (B) an administrator at a health care facility in which the declarant is receiving care; or

439 [~~(vi)~~] (ix) the appointed agent.

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

442 [~~(2) Unless otherwise directed in a health care directive, the authority of an agent:]~~

443 [~~(a) is effective only after a physician makes a determination of incapacity as provided~~  
 444 ~~in Section 75-2a-104;]~~

445 [~~(b) remains in effect during any period of time in which the declarant lacks capacity to~~  
 446 ~~appoint an agent or make health care decisions; and]~~

447 [~~(c) ceases to be effective when:]~~

448 [~~(i) a declarant disqualifies an agent or revokes the health care directive;]~~

449 [~~(ii) a health care provider finds that the declarant has health care decision making~~



450 capacity;]

451 ~~[(iii) a court issues an order invalidating a health care directive or the application of the~~  
 452 ~~health care directive; or]~~

453 ~~[(iv) the individual has challenged the determination of incapacity under the provisions~~  
 454 ~~of Subsection 75-2a-104(3).]~~

455 ~~[(3)]~~ (2) An agent appointed under the provisions of this section may not be a health  
 456 care provider for the declarant, or an owner, operator, or employee of the health care facility at  
 457 which the declarant is receiving care unless the agent is related to the declarant by blood,  
 458 marriage, or adoption.

459 ~~[(4) If the declarant does not specify the agent's access to medical records in an advance~~  
 460 ~~health care directive, the agent's access to medical records is governed by Section 75-2a-113.]~~

461 Section 7. Section **75-2a-108** is amended to read:

462 **75-2a-108. Default surrogates.**

463 (1) (a) Any member of the class described in Subsection (1)(b) may act as an  
 464 ~~[individual's]~~ adult's surrogate ~~[health care decision maker]~~ if:

465 (i) (A) the adult has not appointed an agent ~~[or court-appointed guardian is absent or];~~

466 (B) an appointed agent is not reasonably available; ~~[and]~~ or

467 (C) a guardian has not been appointed; and

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

469 (A) over 18 years of age;

470 (B) has health care decision making capacity;

471 (C) is reasonably available; and

472 (D) has not been disqualified by the ~~[individual]~~ adult or a court.

473 (b) ~~[The]~~ Except as provided in Subsection (1)(a), and subject to Subsection (1)(c), the  
 474 following classes of the ~~[individual's]~~ adult's family, in descending order of priority, may act as  
 475 the ~~[individual's]~~ adult's surrogate~~[-however an individual in a lower priority class has no rights~~  
 476 ~~to direct an individual's care if a member of a higher priority class is able and willing to act as~~  
 477 ~~surrogate]:~~

- 478 (i) the ~~[individual's]~~ adult's spouse, unless~~[-(A)]~~ the adult is divorced or legally  
479 separated ~~[from the individual]~~; or  
480 ~~[(B) a court finds that the spouse has acted in a manner that should preclude the spouse~~  
481 ~~from having a priority position as a default surrogate;]~~  
482 (ii) the following family members:  
483 ~~[(ii)]~~ (A) a child;  
484 ~~[(iii)]~~ (B) a parent;  
485 ~~[(iv)]~~ (C) a sibling;  
486 ~~[(v) a grandparent; or]~~  
487 ~~[(vi)]~~ (D) a grandchild~~[-];~~ or  
488 (E) a grandparent.  
489 (c) A person described in Subsection (1)(b), may not direct an adult's care if a person of  
490 a higher priority class is able and willing to act as a surrogate for the adult.  
491 (d) A court may disqualify a person described in Subsection (1)(b) from acting as a  
492 surrogate if the court finds that the person has acted in a manner that is inconsistent with the  
493 position of trust in which a surrogate is placed.  
494 (2) If the family members designated in Subsection (1)(b) are not reasonably available  
495 to act as a surrogate ~~[decision-maker]~~, a person who is 18 years of age or older, other than  
496 those designated in Subsection (1) may act as a surrogate if the person:  
497 (a) has health care decision making capacity;  
498 (b) has exhibited special care and concern for the patient;  
499 (c) ~~[is familiar with]~~ knows the patient and the patient's personal values; and  
500 (d) is reasonably available to act as a surrogate.  
501 (3) The surrogate shall communicate the surrogate's assumption of authority as  
502 promptly as practicable to the members of a class who:  
503 (a) have an equal or higher priority and are not acting as surrogate; and  
504 (b) can be readily contacted.  
505 (4) A health care provider shall comply with the decision of a majority of the members

506 of [a] the highest priority class who have communicated their views to the provider if:

507 (a) more than one member of [a] the highest priority class assumes authority to act as  
 508 default surrogate;

509 (b) the members of the class do not agree on a health care decision; and

510 (c) the health care provider is informed of the disagreement among the members of the  
 511 class.

512 (5) (a) [~~The individual~~] An adult may at any time disqualify a default surrogate,  
 513 including a member of the [~~individual's~~] adult's family, from acting as the [~~individual's~~] adult's  
 514 surrogate by:

515 (i) a signed writing;

516 (ii) personally informing a witness of the disqualification [~~so long as the witness is not~~];

517 or

518 [~~(A) related to the individual by blood or marriage;~~]

519 [~~(B) entitled to any portion of the declarant's estate according to the laws of intestate  
 520 succession of this state or under any will or codicil of the declarant;~~]

521 [~~(C) directly financially responsible for the declarant's medical care;~~]

522 [~~(D) a health care provider who is providing care to the declarant or an administrator at  
 523 a health care facility in which the declarant is receiving care; or]~~

524 [~~(E) an individual who would become a default surrogate after the disqualification; or]~~

525 (iii) [~~verbally~~] informing the [~~default~~] surrogate of the disqualification.

526 (b) Disqualification of a [~~default~~] surrogate is effective even if the [~~individual~~] adult has  
 527 been [~~determined~~] found to lack health care decision making capacity.

528 [~~(6)~~] (7) If reasonable doubt exists regarding the status of an [~~individual~~] adult claiming  
 529 the right to act as a default surrogate, the health care provider may:

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

532 (b) seek a ruling from the court under Section 75-2a-120.

533 [~~(7)~~] (8) A health care provider may seek a ruling from a court pursuant to Section

534 75-2a-120 if the health care provider has evidence that a surrogate is making decisions that are  
535 inconsistent with ~~[the individual's]~~ an adult patient's wishes or preferences.

536 Section 8. Section **75-2a-109** is amended to read:

537 **75-2a-109. Effect of current health care preferences -- When a surrogate may act.**

538 (1) An ~~[individual]~~ adult with health care decision making capacity retains the right to  
539 make health care decisions as long as the ~~[individual]~~ adult has health care decision making  
540 capacity as defined in Section 75-2a-103. For purposes of this chapter, the inability to  
541 communicate through speech does not mean that the ~~[individual]~~ adult lacks health care  
542 decision making capacity.

543 (2) An ~~[individual's]~~ adult's current health care decisions, however expressed or  
544 indicated, always supersede an ~~[individual's]~~ adult's prior decisions or health care directives.

545 ~~[(3) An individual's health care directive takes effect only after the individual loses~~  
546 ~~health care decision making capacity or the individual grants current authority to an agent in~~  
547 ~~accordance with Section 75-2a-107.]~~

548 (3) Unless otherwise directed in an advance health care directive, an advance health  
549 care directive or the authority of a surrogate to make health care decisions on behalf of an adult:

550 (a) is effective only after a physician makes a determination of incapacity as provided in  
551 Section 75-2a-104;

552 (b) remains in effect during any period of time in which the declarant lacks capacity to  
553 make health care decisions; and

554 (c) ceases to be effective when:

555 (i) a declarant disqualifies a surrogate or revokes the advance health care directive;

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

558 (iii) a court issues an order invalidating a health care directive; or

559 (iv) the declarant has challenged the finding of incapacity under the provisions of  
560 Subsection 75-2a-104(3).

561 Section 9. Section **75-2a-110** is amended to read:

562 **75-2a-110. Surrogate decision making -- Scope of authority.**

563 (1) A surrogate [~~decision maker~~] acting under the authority of either Section 75-2a-107  
564 or 75-2a-108 shall make health care decisions in accordance with:

- 565 (a) the [~~individual's~~] adult's current preferences, to the extent possible;
- 566 (b) the [~~individual's~~] adult's written or oral health care directions, if any [~~, unless the~~  
567 ~~health care directive indicates that the surrogate may override the individual's health care~~  
568 ~~directions; and]; or~~

569 [~~(c) other wishes, preferences, and beliefs, to the extent known to the surrogate.~~]

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

573 (c) the substituted judgment standard.

574 [~~(3)~~] (2) A surrogate acting under authority of Sections 75-2a-107 and 75-2a-108:

575 (a) may not admit the [~~individual~~] adult to a licensed health care facility for long-term  
576 custodial placement other than for assessment, rehabilitative, or respite care [~~without the~~  
577 ~~consent] over the objection of [~~the individual; and~~] the adult; and~~

578 (b) may make health care decisions, including decisions to terminate life sustaining  
579 treatment for the [~~individual~~] adult patient in accordance with [~~Subsections (1) and (2)]~~  
580 Subsection (1).

581 [~~(4)~~] (3) A surrogate acting under authority of this section is not subject to civil or  
582 criminal liability or claims of unprofessional conduct for surrogate health care decisions made;

583 (a) in accordance with this section; and [~~made~~]

584 (b) in good faith.

585 Section 10. Section **75-2a-111** is amended to read:

586 **75-2a-111. Priority of decision makers.**

587 (1) The following is the order of priority of those authorized to make health care  
588 decisions on behalf of an [~~individual~~] adult who [~~lacks~~] has been found to lack health care  
589 decision making capacity under Section 75-2a-104:

590           ~~[(1)]~~ (a) a health care agent appointed by an ~~[individual]~~ adult under the provisions of  
591 Section 75-2a-107 unless the agent has been disqualified by:

592           ~~[(a)]~~ (i) the ~~[individual]~~ adult; or

593           ~~[(b)]~~ (ii) a court of law;

594           ~~[(2)]~~ (b) a court-appointed guardian; or

595           ~~[(3)]~~ (c) ~~[a]~~ the highest priority default surrogate acting under authority of Section  
596 75-2a-108.

597           (2) A health care provider or health care facility obtaining consent for health care from  
598 a surrogate shall make a reasonable effort to identify and obtain consent from the surrogate with  
599 the highest priority.

600           Section 11. Section **75-2a-112** is amended to read:

601           **75-2a-112. Decisions by guardian.**

602           (1) A court-appointed guardian shall comply with ~~[the individual's]~~ an adult's advance  
603 health care directive and may not revoke the ~~[individual's]~~ adult's advance health care directive  
604 unless the court, for cause, expressly revokes the ~~[individual's]~~ adult's directive.

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

607           (3) Except as provided in Subsections (1) and (2), a health care decision made by a  
608 guardian for the ~~[individual]~~ adult patient is effective without judicial approval.

609           (4) A guardian is not subject to civil or criminal liability or to claims of unprofessional  
610 conduct for a surrogate health care decision made:

611           ~~(a)~~ in good faith; and

612           ~~(b)~~ in accordance with Section 75-2a-110 ~~[made in good faith].~~

613           Section 12. Section **75-2a-113** is amended to read:

614           **75-2a-113. Personal representative status.**

615           A surrogate ~~[or a guardian appointed in compliance with this chapter]~~ becomes a  
616 personal representative for ~~[the individual]~~ an adult under the Health Insurance Portability and  
617 Accountability Act of 1996 when:

618 (1) the [~~individual loses~~] adult has been found to lack health care decision making  
619 capacity under Section 75-2a-104;

620 (2) the [~~individual~~] adult grants current authority to the surrogate either:

621 (a) in writing; or

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

623 (3) the court appoints a guardian authorized to make health care decisions on behalf of  
624 the [~~individual~~] adult.

625 Section 13. Section **75-2a-114** is amended to read:

626 **75-2a-114. Revocation of directive.**

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

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

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

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

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

633 (i) the declarant; or

634 (ii) [~~a person~~] an adult:

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

636 (B) acting at the direction of the declarant; or

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

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

640 (ii) entitled to any portion of the declarant's estate according to the laws of intestate  
641 succession of this state or under any will or codicil of the declarant;

642 (iii) the beneficiary of any of the following that are held, owned, made, or established  
643 by, or on behalf of, the declarant:

644 (A) a life insurance policy;

645 (B) a trust;

646 (C) a qualified plan;  
 647 (D) a pay on death account; or  
 648 (E) a transfer on death deed;  
 649 (iv) entitled to benefit financially upon the death of the declarant;  
 650 (v) entitled to a right to, or interest in, real or personal property upon the death of the  
 651 declarant;

652 [~~(iii)~~] (vi) directly financially responsible for the declarant's medical care;  
 653 [~~(iv)~~] (vii) a health care provider who is:  
 654 (A) providing care to the declarant; or  
 655 (B) an administrator at a health care facility in which the declarant is receiving care; or  
 656 [~~(v)~~] (viii) the ~~[person]~~ adult who will become agent or default surrogate after the  
 657 revocation~~[; or]~~.

658 [~~(f)~~-a] (2) A decree of annulment, divorce, dissolution of marriage, or legal separation  
 659 [~~that~~] revokes the designation of a spouse as an agent, unless:

660 [~~(i)~~] (a) otherwise specified in the decree; or  
 661 [~~(i)~~] (b) the declarant has affirmed the intent to retain the agent subsequent to the  
 662 annulment, divorce, or legal separation.

663 [~~(2)~~] (3) An advance health care directive that conflicts with an earlier advance health  
 664 care directive revokes the earlier directive to the extent of the conflict.

665 Section 14. Section **75-2a-115** is amended to read:

666 **75-2a-115. Notification to health care provider -- Obligations of health care**  
 667 **providers -- Liability.**

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

- 671 (a) the existence of a health care directive;
- 672 (b) the revocation of a health care directive;
- 673 (c) the existence or revocation of appointment of an agent or default surrogate;



674 (d) the disqualification of a default surrogate; or

675 (e) the appointment or revocation of appointment of a guardian.

676 (2) (a) A health care provider or health care facility is not subject to civil or criminal  
677 liability or to claims of unprofessional conduct for failing to act upon a health care directive, a  
678 revocation of a health care directive, or a disqualification of a surrogate until the health care  
679 provider or health care facility has received an oral directive from an ~~[individual]~~ adult or a copy  
680 of a written directive or revocation of the health care directive, or the disqualification of the  
681 surrogate.

682 (b) A health care provider and health care facility that is notified under Subsection (1)  
683 shall include in the ~~[individual's]~~ adult patient's medical record:

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

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

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

691 (a) complying with a health care decision made by an adult with health care decision  
692 making capacity;

693 ~~[(a)]~~ (b) complying with a health care decision made by a surrogate apparently having  
694 authority to make a health care decision for ~~[an individual]~~ a person, including a decision to  
695 withhold or withdraw health care;

696 ~~[(b)]~~ (c) declining to comply with a health care decision of a surrogate based on a belief  
697 that the surrogate then lacked authority;

698 ~~[(c)]~~ (d) declining to comply with a health care decision of an ~~[individual]~~ adult who  
699 lacks decision making capacity;

700 ~~[(d)]~~ (e) seeking a judicial determination, or requiring a surrogate to obtain a judicial  
701 determination, under Section 75-2a-120 of:

- 702 (i) the validity of a health care directive;
- 703 (ii) the validity of directions from a surrogate or guardian;
- 704 (iii) the decision making capacity of an [~~individual~~] adult who challenges a physician's
- 705 finding of incapacity; or
- 706 (iv) the authority of a guardian or surrogate; or
- 707 [~~(e)~~] (f) complying with an advance health care directive and assuming that the directive
- 708 was valid when made, and has not been revoked or terminated.
- 709 (4) (a) Health care providers and health care facilities shall:
- 710 (i) cooperate with a person authorized under this chapter to make written directives
- 711 concerning health care;
- 712 (ii) unless the provisions of Subsection (4)(b) apply, comply with:
- 713 (A) a health care decision of an [~~individual~~] adult; and
- 714 (B) a health care decision made by [~~a~~] the highest ranking surrogate then authorized to
- 715 make health care decisions for an [~~individual~~] adult, to the same extent as if the decision had
- 716 been made by [~~the individual; and~~] the adult;
- 717 (iii) before implementing a health care decision made by a surrogate, make a reasonable
- 718 attempt to communicate to the [~~individual~~] adult on whose behalf the decision is made:
- 719 (A) the decision made; and
- 720 (B) the identity of the surrogate making the decision.
- 721 (b) A health care provider or health care facility may decline to comply with a [~~health~~
- 722 ~~care instruction or~~] health care decision if:
- 723 (i) in the opinion of the health care provider:
- 724 (A) the [~~individual~~] adult who made the decision lacks health care decision making
- 725 capacity;
- 726 (B) the surrogate who made the decision lacks health care decision making capacity;
- 727 (C) the health care provider has evidence that the surrogate's instructions are
- 728 inconsistent with the [~~individual's~~] adult's health care instructions, or, for [~~an individual~~] a
- 729 person who has always lacked health care decision making capacity, that the surrogate's

730 instructions are inconsistent with the best interest of the ~~[individual]~~ adult; or

731 (D) there is reasonable doubt regarding the status of ~~[an individual]~~ a person claiming  
732 the right to act as a default surrogate, in which case the health care provider shall comply with  
733 Subsection 75-2a-108~~[(6)]~~(7); or

734 (ii) the health care provider declines to comply for reasons of conscience.

735 (c) A health care provider or health care facility that declines to comply with a health  
736 care ~~[instruction]~~ decision in accordance with Subsection (4)(b) must:

737 (i) promptly inform the ~~[individual]~~ adult and any ~~[agent;]~~ acting surrogate~~[-or~~  
738 guardian] of the reason for refusing to comply with the health care ~~[instruction]~~ decision;

739 (ii) make a good faith attempt to resolve the conflict; and

740 (iii) provide continuing care to the ~~[individual]~~ patient until the issue is resolved or until  
741 a transfer can be made to a health care provider or health care facility that will implement the  
742 requested instruction or decision.

743 (d) A health care provider or health care facility that declines to comply with a health  
744 care instruction, after meeting the obligations set forth in Subsection (4)(c) may transfer the  
745 ~~[individual]~~ adult to a health care provider or health care facility that will carry out the  
746 requested health care decisions.

747 (e) A health care facility may decline to follow a health care decision for reasons of  
748 conscience under Subsection (4)(b)(ii) if:

749 (i) the health care decision ~~[or instruction]~~ is contrary to a policy of the facility that is  
750 expressly based on reasons of conscience;

751 (ii) the policy was timely communicated to the ~~[individual]~~ adult and ~~[the individual's]~~  
752 an adult's surrogate;

753 (iii) the facility promptly informs the ~~[individual]~~ adult, if possible, and any surrogate  
754 then authorized to make decisions for the ~~[individual]~~ adult;

755 (iv) the facility provides continuing care to the ~~[individual]~~ adult until a transfer can be  
756 made to a health care facility that will implement the requested instruction or decision; and

757 (v) unless ~~[the individual]~~ an adult or surrogate then authorized to make health care

758 decisions for [~~an individual~~] the adult refuses assistance, immediately make all reasonable efforts  
759 to assist in the transfer of the [~~individual~~] adult to another health care facility that will carry out  
760 the instructions or decisions.

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

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

764 (b) shall comply with all state and federal laws and regulations governing advance  
765 health care directives.

766 Section 15. Section **75-2a-117** is amended to read:

767 **75-2a-117. Optional form.**

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

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

771 Utah Advance Health Care Directive

772 (Pursuant to Utah Code Section 75-2a-117)

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

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

776 Part III: Tells you how to revoke [~~the form~~] or change this directive.

777 Part IV: Makes your directive legal.

778 \_\_\_\_\_

779 My Personal Information

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

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

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

783 \_\_\_\_\_

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

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

786

787

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

788

A. No Agent

789

If you do not want to name an agent: initial the box below, then go to Part II; do not name an

790

agent in B or C below. No one can force you to name an agent.

791

\_\_\_\_\_ I do not want to choose an agent. [~~Initial this paragraph if you do not want to~~

792

~~name an agent, then go to Part II. Do not name an agent below. No individual, organization,~~

793

~~family member, health care provider, lawyer, or insurer should force you to name an agent.]~~

794

B. My Agent

795

Agent's Name:

796

\_\_\_\_\_

797

Street Address:

798

\_\_\_\_\_

799

City, State, Zip Code:

800

\_\_\_\_\_

801

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

802

C. My Alternate Agent

803

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

804

Alternate Agent's Name:

805

\_\_\_\_\_

806

Street Address:

807

\_\_\_\_\_

808

City, State, Zip Code:

809

\_\_\_\_\_

810

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

811

D. Agent's Authority

812

If I cannot make decisions or speak for myself (in other words, after my physician or APRN

813

finds that I lack health care decision making capacity under Section 75-2a-104 of the Advance

814 Health Care Directive Act), my agent ~~[can]~~ has the power to make any health care decision I  
815 could have made such as, but not limited to:

816 ~~[1:]~~ • Consent to, refuse, or withdraw any health care. This may include care to prolong my life  
817 such as food and fluids by tube, use of antibiotics, CPR (cardiopulmonary resuscitation), and  
818 dialysis, and mental health care, such as convulsive therapy and psychoactive medications. This  
819 authority is subject to any limits in paragraph F of ~~[this section]~~ Part I or in Part II of this  
820 directive.

821 ~~[2:]~~ • Hire and fire health care providers.

822 ~~[3:]~~ • Ask questions and get answers from health care providers.

823 ~~[4:]~~ • Consent to admission or transfer to a health care provider or health care facility, including  
824 a mental health facility, subject to any limits in paragraphs E ~~[or]~~ and F of ~~[this section]~~ Part I.

825 ~~[5:]~~ • Get copies of my medical records.

826 ~~[6:]~~ • Ask for consultations or second opinions.

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

829 E. Other Authority

830 My agent has the powers below ONLY IF I ~~[place a check next to]~~ initial the "yes" [in] option  
831 that precedes the statement. I authorize my agent to:

832 [~~Yes~~] YES \_\_\_\_\_ NO \_\_\_\_\_ Get copies of my medical records at any time, even when  
833 I can speak for myself.

834 [~~Yes~~] YES \_\_\_\_\_ [~~No~~] NO \_\_\_\_\_ Admit me to a licensed health care facility, such as a  
835 hospital, nursing home, assisted living, or other ~~[congregate]~~ facility for long-term placement  
836 other than convalescent or recuperative care~~[, unless I agree to be admitted at that time].~~

837 F. Limits/Expansion of Authority

838 I wish to limit or expand the powers of my ~~[healthcare]~~ health care agent as follows:

839 \_\_\_\_\_  
840 \_\_\_\_\_

841 G. Nomination of Guardian

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

846 [Yes] YES \_\_\_\_\_ [No] NO \_\_\_\_\_ [~~By appointing an agent in this document, I intend to~~  
847 ~~avoid guardianship. If I must have a guardian, I want my agent to be my guardian.]~~

848 I, being of sound mind and not acting under duress, fraud, or other undue influence, do hereby  
849 nominate my agent, or if my agent is unable or unwilling to serve, I hereby nominate my  
850 alternate agent, to serve as my guardian in the event that, after the date of this instrument, I  
851 become incapacitated.

852 H. Consent to Participate in Medical Research

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

855 I. [~~Consent to~~] Organ Donation

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

858 [~~J. Agent's Authority to Override Expressed Wishes]~~

859 [~~Yes \_\_\_\_\_ No \_\_\_\_\_ My agent may make decisions about health care that are different from~~  
860 ~~the instructions in Part II of this form.]~~

861 \_\_\_\_\_

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

863 I want my health care providers to follow the instructions I give them when I am being treated[;  
864 ~~so long as I can make health care decisions], even if [the] my instructions [~~appear to~~] conflict~~  
865 ~~with these or other advance directives. My health care providers should always provide~~  
866 ~~[comfort measures and] health care to keep me as comfortable and functional as possible.~~

867 Choose only one of the following options, numbered Option 1 through Option 4, by placing  
868 your initials before the numbered statement [that reflects your wishes]. Do not initial more than  
869 one option. If you do not wish to document end-of-life wishes, initial Option 4. You may

870 choose to draw a line through the options that you are not choosing.

871 Option 1

872 [~~+~~] \_\_\_\_\_ Initial

873 I choose to let my agent decide. I have chosen my agent carefully. I have talked with my agent  
874 about my health care wishes. I trust my agent to make the health care decisions for me that I  
875 would make under the circumstances. [~~My agent may stop care that is prolonging my life only  
876 after the conditions checked "yes" below are met.~~]

877 Additional Comments:

878 \_\_\_\_\_

879 Option 2

880 \_\_\_\_\_ Initial

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

884 Other:

885 \_\_\_\_\_

886 Option 3

887 \_\_\_\_\_ Initial

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

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

893 \_\_\_\_\_ Initial

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

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

897 \_\_\_\_\_ Initial



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

900 [~~Yes \_\_\_\_\_ No \_\_\_\_\_~~] \_\_\_\_\_ I have a progressive illness that will cause death.

901 [~~Yes \_\_\_\_\_ No \_\_\_\_\_~~] \_\_\_\_\_ I am close to death and am unlikely to recover.

902 [~~Yes \_\_\_\_\_ No \_\_\_\_\_~~] \_\_\_\_\_ I cannot communicate and it is unlikely that my condition will improve.

903 [~~Yes \_\_\_\_\_ No \_\_\_\_\_~~] \_\_\_\_\_ I do not recognize my friends or family and it is unlikely that my  
904 condition will improve.

905 [~~Yes \_\_\_\_\_ No \_\_\_\_\_~~] \_\_\_\_\_ I am in a persistent vegetative state.

906 Other:

907 \_\_\_\_\_

908 [~~2. \_\_\_\_\_ I want to prolong life. Regardless of my condition or prognosis, I want my~~  
909 ~~health care providers to try to keep me alive as long as possible, within the limits of generally~~  
910 ~~accepted health care standards.]~~

911 [~~3. \_\_\_\_\_ I choose NOT to receive care for the purpose of prolonging life, including food~~  
912 ~~and fluids by tube, antibiotics, CPR, or dialysis used to prolong my life. I always want comfort~~  
913 ~~care and routine medical care that will keep me as comfortable and functional as possible, even~~  
914 ~~if that care may prolong my life. My health care provider may stop care that is prolonging my~~  
915 ~~life only after the conditions checked "yes" below are met. If I check "no" to all the conditions,~~  
916 ~~my health care provider should not provide care to prolong my life.]~~

917 [~~Yes \_\_\_\_\_ No \_\_\_\_\_ I have a progressive illness that will cause death.]~~

918 [~~Yes \_\_\_\_\_ No \_\_\_\_\_ I am close to death and am unlikely to recover.]~~

919 [~~Yes \_\_\_\_\_ No \_\_\_\_\_ I cannot communicate and it is unlikely that my condition will~~  
920 ~~improve:]~~

921 [~~Yes \_\_\_\_\_ No \_\_\_\_\_ I do not recognize my friends or family and it is unlikely that my~~  
922 ~~condition will improve:]~~

923 [~~Yes \_\_\_\_\_ No \_\_\_\_\_ I am in a persistent vegetative state:]~~

924 [~~4. \_\_\_\_\_ I choose not to provide instructions about end-of-life care in this directive:]~~

925 Option 4

926 Initial

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

928 Other:

929 \_\_\_\_\_

930 Additional [~~or Other Instructions~~] instructions about your health care wishes:

931 \_\_\_\_\_

932 \_\_\_\_\_

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

936 Part III: Revoking [~~My~~] or Changing a Directive

937 I may revoke or change this directive by:

- 938 1. Writing "void" across the form, or burning, tearing, or otherwise destroying or defacing [~~the~~]
- 939 this document or [~~asking~~] directing another person to do the same on my behalf;
- 940 2. Signing a written revocation of the directive, or directing another person to sign a [~~written~~]
- 941 revocation on my behalf;
- 942 3. Stating that I wish to revoke the directive in the presence of a witness who [~~meets the~~]
- 943 requirements of the witness in Part IV, below, and who will not be appointed as agent or
- 944 become a default surrogate when the directive is revoked; or]; is 18 years of age or older; will
- 945 not be appointed as my agent in a substitute directive; will not become a default surrogate if the
- 946 directive is revoked; and signs and dates a written document confirming my statement; or
- 947 4. Signing a new directive. (If you sign more than one Advance Health Care Directive, the
- 948 most recent one applies.)

949 Part IV: Making My Directive Legal

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

954 [Date:] \_\_\_\_\_

955 Date

956 [Signature:] \_\_\_\_\_

957 Signature

958 \_\_\_\_\_

959 City, County, and State of Residence

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

- 961 1. related to the declarant by blood or marriage;
- 962 2. entitled to any portion of the declarant's estate according to the laws of intestate succession
- 963 of [~~Utah~~] any state or jurisdiction or under any will or codicil of the declarant;
- 964 3. a beneficiary of a life insurance policy, trust, qualified plan, pay on death account, or transfer
- 965 on death deed that is held, owned, made, or established by, or on behalf of, the declarant;
- 966 4. entitled to benefit financially upon the death of the declarant;
- 967 5. entitled to a right to, or interest in, real or personal property upon the death of the declarant;
- 968 [~~3-~~] 6. directly financially responsible for the declarant's medical care;
- 969 [~~4-~~] 7. a health care provider who is providing care to the declarant or an administrator at a
- 970 health care facility in which the declarant is receiving care; or
- 971 [~~5-~~] 8. the appointed agent or alternate agent.

972 [Signature of Witness:]

973 \_\_\_\_\_

\_\_\_\_\_

974 Signature of Witness

Printed Name of Witness

975 \_\_\_\_\_

\_\_\_\_\_

976 Street Address

City

State

Zip Code

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

979 \_\_\_\_\_

980 \_\_\_\_\_

981 Section 16. Section **75-2a-118** is amended to read:

982 **75-2a-118. Illegal destruction or falsification of health care directive.**

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

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

986 (b) falsifies, forges, or alters a health care directive or a revocation of the health care  
987 directive of another ~~[individual]~~ person.

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

989 (a) the person:

990 (i) falsifies or forges the health care directive of ~~[another]~~ an adult; or

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

992 (A) the existence of a health care directive;

993 ~~[(A)]~~ (B) the revocation of a health care directive; or

994 ~~[(B)]~~ (C) the disqualification of a surrogate; and

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

998 Section 17. Section **75-2a-119** is amended to read:

999 **75-2a-119. Health care directive effect on insurance policies.**

1000 (1) If an ~~[individual]~~ adult makes a health care directive under this chapter, the health  
1001 care directive does not affect in any manner:

1002 (a) the obligation of any life or medical insurance company regarding any policy of life  
1003 or medical insurance;

1004 (b) the sale, procurement, or issuance of any policy of life or health insurance; or

1005 (c) the terms of any existing policy.

1006 (2) (a) Notwithstanding any terms of an insurance policy to the contrary, an insurance  
1007 policy is not legally impaired or invalidated in any manner by:

1008 (i) withholding or withdrawing life sustaining procedures; or

1009 (ii) following directions in a health care directive executed as provided in this chapter.

1010 (b) Following health care instructions in a health care directive does not constitute legal  
1011 cause for failing to pay life or health insurance benefits. Death that occurs after following the  
1012 instructions of an advance health care directive or a surrogate's instructions does not for any  
1013 purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or  
1014 an annuity providing a death benefit.

1015 (3) (a) The following may not require an [individual] adult to execute a directive or to  
1016 make any particular choices or entries in a directive under this chapter as a condition for being  
1017 insured for or receiving health care or life insurance contract services:

- 1018 (i) a health care provider;
- 1019 (ii) a health care facility;
- 1020 (iii) a health maintenance organization;
- 1021 (iv) an insurer issuing disability, health, or life insurance;
- 1022 (v) a self-insured employee welfare or benefit plan;
- 1023 (vi) a nonprofit medical service corporation or mutual nonprofit hospital service  
1024 corporation; or
- 1025 (vii) any other person, firm, or entity.

1026 (b) Nothing in this chapter:

1027 (i) may be construed to require an insurer to insure risks otherwise considered by the  
1028 insurer as not a covered risk;

1029 (ii) is intended to impair or supersede any other legal right or legal responsibility which  
1030 an [individual] adult may have to effect the withholding or withdrawal of life sustaining  
1031 procedures in any lawful manner; or

1032 (iii) creates any presumption concerning the intention of an [individual] adult who has  
1033 not executed a health care directive.

1034 Section 18. Section **75-2a-121** is amended to read:

1035 **75-2a-121. Reciprocity -- Application of former provisions of law.**

1036 Unless otherwise provided in the health care directive:

1037 (1) a health care provider or health care facility may, in good faith, rely on any health

1038 care directive, power of attorney, or similar instrument:

1039 (a) executed in another state; or

1040 (b) executed prior to January 1, 2008, in this state under the provisions of Chapter 2,  
1041 Part 11, Personal Choice and Living Will Act; [~~and~~]

1042 (2) a health care directive executed under the provisions of this chapter shall be  
1043 governed pursuant to the provisions of this chapter that were in effect at that time, unless it  
1044 appears from the directive that the declarant intended the current provisions of this chapter to  
1045 apply; and

1046 [~~(2)~~] (3) the health care directive described in Subsection (1) is presumed to comply  
1047 with the requirements of this chapter.

1048 Section 19. Section **75-2a-122** is amended to read:

1049 **75-2a-122. Effect of act.**

1050 The Advance Health Care Directive Act created in this chapter does not:

1051 (1) create a presumption concerning the intention of an [~~individual~~] adult who has not  
1052 made or who has revoked an advance health care directive;

1053 (2) authorize mercy killing, assisted suicide, or euthanasia; [~~and~~] or

1054 (3) authorize the provision, withholding, or withdrawal of health care, to the extent  
1055 prohibited by the laws of this state.

1056 Section 20. Section **75-2a-123** is amended to read:

1057 **75-2a-123. Pregnancy.**

1058 (1) A health care directive that provides for the withholding or withdrawal of life  
1059 sustaining procedures has no force during the course of a declarant's pregnancy.

1060 (2) Subsection (1) does not negate the appointment of a health care agent during the  
1061 course of a declarant's pregnancy.

1062 Section 21. Section **75-2a-124** is amended to read:

1063 **75-2a-124. Provisions cumulative with existing law.**

1064 The provisions of this chapter are cumulative with existing law regarding [~~an~~  
1065 ~~individual's~~] a person's right to consent or refuse to consent to medical treatment and do not

1066 impair any existing rights or responsibilities that a health care provider, [~~an individual~~] a person,  
1067 including a minor or incapacitated [~~individual~~] person, or [~~an individual's~~] a person's family or  
1068 surrogate may have in regard to the provision, withholding or withdrawal of life sustaining  
1069 procedures under the common law or statutes of the state.

1070 Section 22. Section **75-2a-125** is enacted to read:

1071 **75-2a-125. Severability.**

1072 If any one or more provision, section, subsection, sentence, clause, phrase, or word of  
1073 this chapter, or the application of this chapter to any person or circumstance, is found to be  
1074 unconstitutional, the same is hereby declared to be severable and the balance of this chapter  
1075 shall remain effective notwithstanding such unconstitutionality. The Legislature hereby declares  
1076 that it would have passed this chapter, and each provision, section, subsection, sentence, clause,  
1077 phrase, or word of this chapter, irrespective of the fact that any one or more provision, section,  
1078 subsection, sentence, clause, phrase, or word be declared unconstitutional.