

**ADVANCE HEALTH CARE DIRECTIVE**

**AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Allen M. Christensen**

House Sponsor: Steven R. Mascaro

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**LONG TITLE**

**General Description:**

This bill amends the Advance Health Care Directive Act.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ describes the standard to be used by a surrogate in making a health care decision on behalf of a person who no longer has capacity to make the person's own health care decisions;
- ▶ modifies provisions related to a physician order for life sustaining treatment form and revocation of the form;
- ▶ describes who may witness the making or revocation of an advance health care directive;
- ▶ modifies provisions related to default surrogates, including:
  - the order of priority among potential surrogates; and
  - witnessing the disqualification of a default surrogate;
- ▶ modifies the optional form for an advance health care directive;
- ▶ describes the reciprocal applicability of an advance health care directive made before the effective date of this bill; and
- ▶ 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-120**, as enacted by Laws of Utah 2007, Chapter 31

51       **75-2a-121**, as enacted by Laws of Utah 2007, Chapter 31

52       **75-2a-122**, 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

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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  
64 treating 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  
70 pain;

71 (c) Utah law should:

72 (i) provide [~~individuals~~] an adult with a legal tool to designate a health care agent and  
73 express preferences about health care options to go into effect only after the [~~individual~~] adult  
74 loses the ability to make or communicate health care decisions, including decisions about  
75 end-of-life care; and

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

78 (d) surrogate decisions made on behalf of [~~a person~~] an adult who previously had  
79 capacity to make health care decisions, but who has lost health care decision making capacity  
80 should be based on:

81 (i) input from the incapacitated [~~person~~] adult, to the extent possible under the  
82 circumstances;

83 (ii) specific preferences expressed by the [~~individual~~] adult prior to the loss of health  
84 care decision making capacity;

85 (iii) the surrogate's understanding of the [~~individual's~~] adult's health care preferences;  
86 and

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

89 (e) surrogate decisions made on behalf of an [~~individual~~] adult who has never had

90 health care decision making capacity should be made on the basis of the ~~[individual's]~~ adult's  
91 best interest.

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

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

97 (b) withhold or withdraw health care; or

98 (c) provide health care only to the extent set forth in a health care 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) "Agent" means a person designated in an advance health care directive to  
106 make health care decisions for the declarant.

107 (3) "APRN" means a person who is:

108 (a) certified or licensed as an advance practice registered nurse under Subsection  
109 58-31b-301(2)(d);

110 (b) an independent practitioner;

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

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

114 ~~[(2)]~~ (4) "Best interest" means that the benefits to the ~~[individual]~~ person resulting  
115 from a treatment outweigh the burdens to the ~~[individual]~~ person resulting from the treatment,  
116 taking into account:

117 (a) the effect of the treatment on the physical, emotional, and cognitive functions of the  
118 ~~[individual]~~ person;

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

121 (c) the degree to which the [~~individual's~~] person's medical condition, the treatment, or  
 122 the withholding or withdrawal of treatment, result in a severe and continuing impairment of the  
 123 dignity of the [~~individual~~] person by subjecting the [~~individual~~] person to humiliation and  
 124 dependency;

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

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

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

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

132 [~~(3)~~] (5) "Capacity to appoint an agent" means that the [~~individual~~] adult understands  
 133 the consequences of appointing a particular person as agent.

134 [~~(4)~~] (6) "Declarant" means an [~~individual~~] adult who has completed and signed or  
 135 directed the signing of a health care directive.

136 [~~(5)~~] (7) "Default surrogate [~~decision maker~~]" means the [~~person~~] adult who may make  
 137 decisions for an individual when either:

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

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

141 [~~(6)~~] (8) "Generally accepted health care standards":

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

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

145 (ii) enabling health care providers to interpret the statutory form set forth in Section  
 146 75-2a-117; and

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

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

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

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

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

155 [~~(8)~~] (9) "Health care" means any care, treatment, service, or procedure to improve,  
156 maintain, diagnose, or otherwise affect [~~an individual's~~] a person's physical or mental  
157 condition.

158 [~~(9)~~] (10) "Health care decision":

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

162 (b) includes:

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

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

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

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

170 [~~(10)~~] (11) "Health care decision making capacity" means an [~~individual's~~] adult's  
171 ability to make an informed decision about receiving or refusing health care, including:

172 (a) the ability to understand the nature, extent, or probable consequences of the health  
173 care alternatives;

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

176 (c) the ability to communicate a decision.

177 [~~(11)~~] (12) "Health care directive":

178 (a) includes:

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

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

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

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

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

187 ~~[(12)]~~ (13) "Health care facility" means:

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

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

192 ~~[(13)]~~ (14) "Health care provider" is defined in Section 78-14-3.

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

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

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

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

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

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

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

200 (15) "Minor" means a person who:

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

202 (b) is not an emancipated minor.

203 (16) "Physician" means a physician and surgeon or osteopathic surgeon licensed under  
204 Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical  
205 Practice Act.

206 ~~[(15)]~~ (17) "Reasonably available" means:

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

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

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

213 (a) specific preferences expressed by the adult:

- 214 (i) when the adult had the capacity to make health care decisions; and
- 215 (ii) at the time the decision is being made;
- 216 (b) the surrogate's understanding of the adult's health care preferences;
- 217 (c) the surrogate's understanding of what the adult would have wanted under the
- 218 circumstances; and
- 219 (d) to the extent that the preferences described in Subsections (18)(a) through (c) are
- 220 unknown, the best interest of the adult.

221 ~~[(16)]~~ (19) "Surrogate" means a health care decision maker who is:

- 222 (a) an appointed agent;
- 223 (b) a default surrogate ~~[decision maker]~~ under the provisions of Section 75-2a-108; or
- 224 (c) a ~~[court-appointed]~~ guardian.

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

226 **75-2a-104. Capacity to make health care decisions -- Presumption -- Overcoming**  
227 **presumption.**

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

- 229 (a) health care decision making capacity; and
- 230 (b) capacity to make or revoke a health care directive.

231 (2) To overcome the presumption of capacity, a physician or an APRN who has  
232 personally examined the ~~[individual]~~ adult and assessed the ~~[individual's]~~ adult's health care  
233 decision making capacity must:

- 234 (a) find that the ~~[individual]~~ adult lacks health care decision making capacity;
- 235 (b) record the finding in the ~~[individual's]~~ adult's medical chart including an indication  
236 of whether the ~~[individual]~~ adult is likely to regain health care decision making capacity; and
- 237 (c) make a reasonable effort to communicate the determination to:
  - 238 (i) the ~~[individual]~~ adult;
  - 239 (ii) other health care providers or health care facilities that the physician or APRN  
240 would routinely inform of such a finding; and

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

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



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

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

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

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

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

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

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

259 (d) Unless otherwise ordered by a court, a finding by a physician, under Subsection (2),  
260 that the adult lacks health care decision making capacity, is not in effect, if the adult challenges  
261 the finding under Subsection (3)(a).

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

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

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

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

274 **75-2a-105. Capacity to complete an advance health care directive.**

275 (1) An [individual] adult is presumed to have the capacity to complete an advance

276 health care directive.

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

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

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

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

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

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

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

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

296 **75-2a-106. Emergency medical services -- Physician order.**

297 (1) A physician order for life sustaining treatment may be completed on behalf of a  
298 person:

299 (a) if the person is an adult who has health care decision making capacity, by the  
300 person;

301 (b) if the person is a minor, by a parent or guardian of the minor; or

302 (c) if the person is an adult who lacks health care decision making capacity, by the  
303 person's surrogate, pursuant to the provisions of this chapter.

304 (2) A physician order for life sustaining treatment shall:

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

306 (b) include the date on which the order is made;

307 (c) if the person is an adult with health care decision making capacity, be signed by:  
308 (i) the adult; or  
309 (ii) an adult who signs the form at the direction of the adult to whom the form relates;  
310 (d) subject to Subsection (3), if the person is a minor, be signed by a parent or guardian  
311 of the minor; or  
312 (e) if the person is an adult who lacks health care decision making capacity, be signed  
313 by:  
314 (i) the surrogate with the highest priority under Section 75-2a-111;  
315 (ii) the majority of the class of surrogates with the highest priority under Section  
316 75-2a-111; or  
317 (iii) a person directed to sign the order by, and on behalf of, the persons described in  
318 Subsection (2)(e)(i) or (ii); and  
319 (f) be personally signed, completed, and certified by the person's physician or APRN.  
320 (3) In addition to the requirements of Subsection (2), if the order relates to a minor and  
321 directs that life sustaining treatment be withheld or withdrawn, the order shall include a  
322 certification by two physicians that, in their clinical judgment, an order to withhold or  
323 withdraw life sustaining treatment is in the best interest of the minor.  
324 (4) The physician order for life sustaining treatment may:  
325 (a) specify the level of life-sustaining care to be provided to the person; or  
326 (b) direct that life-sustaining care be withheld or withdrawn from the person.  
327 (5) A health care provider, health care facility, or emergency medical service provider,  
328 licensed or certified under Title 26, Chapter 8a, Utah Emergency Medical Services System Act,  
329 who responds to a call to provide emergency medical services as defined in Section 26-8a-102,  
330 may:  
331 (a) in accordance with the direction given in an order for life sustaining treatment  
332 described in this section, provide, withhold, or withdraw life sustaining treatment from the  
333 person to whom the order applies; or  
334 (b) decline to follow a direction given in an order to withhold or withdraw  
335 life-sustaining treatment from the person to whom the order applies, if evidence suggests that  
336 the order may not be valid or may not reflect the health care instructions of the person or the  
337 person's surrogate.

338 (6) To the extent that the provisions of an order for life sustaining treatment described  
 339 in this section conflict with the provisions of a directive made under Section 75-2a-107, the  
 340 provisions of the order for life sustaining treatment form take precedence.

341 (7) An adult, a parent or guardian of a minor, or a surrogate may revoke an order for  
 342 life sustaining treatment by:

343 (a) orally informing emergency service personnel;

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

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

346 (i) the form; or

347 (ii) a bracelet or other evidence of the physician order;

348 (d) asking another adult to take the action described in this Subsection (7) on the  
 349 person's behalf;

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

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

354 (g) completing a new physician order.

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

357 (i) create the forms and systems described in this section; and

358 (ii) develop uniform instructions for the form established in Section 75-2a-117.

359 (b) The Department of Health may assist others with training of health care  
 360 professionals regarding this chapter.

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

362 **75-2a-107. Advance health care directive -- Appointment of agent -- Powers of**  
 363 **agent -- Health care directions.**

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

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

367 (ii) give directions for the care of the [~~individual~~] adult after the [~~individual~~] adult loses  
 368 health care decision making capacity [~~or chooses~~];

- 369            (iii) choose not to give directions;
- 370            [~~(iii)~~] (iv) state conditions that must be met before life sustaining treatment may be  
371 withheld or withdrawn;
- 372            [~~(iv)~~] (v) authorize an agent to consent to the [~~individual's~~] adult's participation in  
373 medical research;
- 374            [~~(v)~~] (vi) nominate a guardian;
- 375            [~~(vi)~~] (vii) authorize an agent to consent to organ donation;
- 376            [~~(vii)~~] (viii) expand or limit the powers of a health care agent; and
- 377            [~~(viii)~~] (ix) designate the agent's access to the [~~individual's~~] adult's medical records.
- 378            (b) An advance health care directive may be oral or written.
- 379            (c) An advance health care directive shall be witnessed by a disinterested [~~individual~~]  
380 adult. The witness may not be:
- 381            (i) the person who signed the directive on behalf of the declarant;
- 382            (ii) related to the declarant by blood or marriage;
- 383            (iii) entitled to any portion of the declarant's estate according to the laws of intestate  
384 succession of this state or under any will or codicil of the declarant;
- 385            (iv) the beneficiary of any of the following that are held, owned, made, or established  
386 by, or on behalf of, the declarant:
- 387            (A) a life insurance policy;
- 388            (B) a trust;
- 389            (C) a qualified plan;
- 390            (D) a pay on death account; or
- 391            (E) a transfer on death deed;
- 392            (v) entitled to benefit financially upon the death of the declarant;
- 393            (vi) entitled to a right to, or interest in, real or personal property upon the death of the  
394 declarant;
- 395            [~~(iv)~~] (vii) directly financially responsible for the declarant's medical care;
- 396            [~~(v)~~] (viii) a health care provider who is:
- 397            (A) providing care to the declarant; or
- 398            (B) an administrator at a health care facility in which the declarant is receiving care; or
- 399            [~~(vi)~~] (ix) the appointed agent.

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

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

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

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

407 (c) ceases to be effective when:

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

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

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

413 (iv) the ~~[individual]~~ declarant has challenged the ~~[determination]~~ finding of incapacity  
414 under the provisions of Subsection 75-2a-104(3).

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

419 ~~[(4) If the declarant does not specify the agent's access to medical records in an~~  
420 ~~advance health care directive, the agent's access to medical records is governed by Section~~  
421 ~~75-2a-113.]~~

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

423 **75-2a-108. Default surrogates.**

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

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

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

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

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

430 (A) over 18 years of age;

431 (B) has health care decision making capacity;

432 (C) is reasonably available; and

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

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

439 (i) the ~~[individual's]~~ adult's spouse, unless:

440 (A) divorced or legally separated from the ~~[individual]~~ adult; or

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

443 (ii) the following family members, unless a court finds that the family member has  
 444 acted in a manner that should preclude the family member from having a position or a priority  
 445 position as a default surrogate:

446 ~~[(ii)]~~ (A) a child;

447 ~~[(iii)]~~ (B) a parent;

448 ~~[(iv)]~~ (C) a sibling;

449 ~~[(v)]~~ a grandparent; ~~or~~

450 ~~[(vi)]~~ (D) a grandchild~~[-]; or~~

451 (E) a grandparent.

452 (c) A person described in Subsection (1)(b), may not direct an adult's care if a person of  
 453 a higher priority class is able and willing to act as a surrogate for the adult.

454 (2) If the family members designated in Subsection (1)(b) are not reasonably available  
 455 to act as a surrogate ~~[decision-maker]~~, a person who is 18 years of age or older, other than those  
 456 designated in Subsection (1) may act as a surrogate if the person:

457 (a) has health care decision making capacity;

458 (b) has exhibited special care and concern for the patient;

459 (c) ~~[is familiar with]~~ knows the patient and the patient's personal values; and

460 (d) is reasonably available to act as a surrogate.

461 (3) The surrogate shall communicate the surrogate's assumption of authority as

462 promptly as practicable to the members of a class who:

463 (a) have an equal or higher priority and are not acting as surrogate; and

464 (b) can be readily contacted.

465 (4) A health care provider shall comply with the decision of a majority of the members

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

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

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

470 (c) the health care provider is informed of the disagreement among the members of the  
471 class.

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

475 (i) a signed writing;

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

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

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

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

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

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

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

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

488 [~~(6)~~] (7) If reasonable doubt exists regarding the status of an [~~individual~~] adult  
489 claiming the right to act as a default surrogate, the health care provider may:

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

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



493           ~~[(7)]~~ (8) A health care provider may seek a ruling from a court pursuant to Section  
 494 75-2a-120 if the health care provider has evidence that a surrogate is making decisions that are  
 495 inconsistent with ~~[the individual's]~~ an adult patient's wishes or preferences.

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

497           **75-2a-109. Effect of current health care preferences -- When directive takes**  
 498 **effect.**

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

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

506           (3) An ~~[individual's]~~ adult's health care directive takes effect only after the ~~[individual~~  
 507 ~~loses]~~ adult is found by a physician or APRN to lack health care decision making capacity or  
 508 the ~~[individual]~~ adult grants current authority to an agent in accordance with Section  
 509 75-2a-107.

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

511           **75-2a-110. Surrogate decision making -- Scope of authority.**

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

514           (a) the ~~[individual's]~~ adult's current preferences, to the extent possible;

515           (b) the ~~[individual's]~~ adult's written or oral health care directions, if any~~[-unless the~~  
 516 ~~health care directive indicates that the surrogate may override the individual's health care~~  
 517 ~~directions; and];~~ or

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

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

522           ~~(c) the substituted judgment standard.~~

523           ~~[(3)]~~ (2) A surrogate acting under authority of Sections 75-2a-107 and 75-2a-108:

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

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

530 ~~[(4)]~~ (3) A surrogate acting under authority of this section is not subject to civil or  
 531 criminal liability or claims of unprofessional conduct for surrogate health care decisions made:

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

533 (b) in good faith.

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

535 **75-2a-111. Priority of decision makers.**

536 (1) The following is the order of priority of those authorized to make health care  
 537 decisions on behalf of an ~~[individual]~~ adult who lacks decision making capacity:

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

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

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

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

543 ~~[(3)]~~ (c) ~~[a]~~ the highest priority default surrogate acting under authority of Section  
 544 75-2a-108.

545 (2) A health care provider or health care facility obtaining consent from a surrogate  
 546 shall make a reasonable effort to identify and obtain consent from the surrogate with the  
 547 highest priority.

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

549 **75-2a-112. Decisions by guardian.**

550 (1) A court-appointed guardian shall comply with ~~[the individual's]~~ an adult's advance  
 551 health care directive and may not revoke the ~~[individual's]~~ adult's advance health care directive  
 552 unless the court expressly revokes the ~~[individual's]~~ adult's directive.

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

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

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

559 (a) in good faith; and

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

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

562 **75-2a-113. Personal representative status.**

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

566 (1) the [~~individual~~] adult loses health care decision making capacity;

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

568 (a) in writing; or

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

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

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

573 **75-2a-114. Revocation of directive.**

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

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

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

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

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

580 (i) the declarant; or

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

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

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

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

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

587 (ii) entitled to any portion of the declarant's estate according to the laws of intestate

588 succession of this state or under any will or codicil of the declarant;

589 (iii) the beneficiary of any of the following that are held, owned, made, or established

590 by, or on behalf of, the declarant:

591 (A) a life insurance policy;

592 (B) a trust;

593 (C) a qualified plan;

594 (D) a pay on death account; or

595 (E) a transfer on death deed;

596 (iv) entitled to benefit financially upon the death of the declarant;

597 (v) entitled to a right to, or interest in, real or personal property upon the death of the

598 declarant;

599 [~~(iii)~~] (vi) directly financially responsible for the declarant's medical care;

600 [~~(iv)~~] (vii) a health care provider who is:

601 (A) providing care to the declarant; or

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

603 [~~(v)~~] (viii) the ~~[person]~~ adult who will become agent or default surrogate after the

604 revocation~~[-or]~~.

605 [~~(f)~~-a] (2) A decree of annulment, divorce, dissolution of marriage, or legal separation

606 [~~that~~] revokes the designation of a spouse as an agent, unless:

607 [(~~i~~)] (a) otherwise specified in the decree; or

608 [(~~ii~~)] (b) the declarant has affirmed the intent to retain the agent subsequent to the

609 annulment, divorce, or legal separation.

610 [~~(2)~~] (3) An advance health care directive that conflicts with an earlier advance health

611 care directive revokes the earlier directive to the extent of the conflict.

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

613 **75-2a-115. Notification to health care provider -- Obligations of health care**

614 **providers -- Liability.**

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

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

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

618 (a) the existence of a health care directive;

619 (b) the revocation of a health care directive;

620 (c) the existence or revocation of appointment of an agent or default surrogate;

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

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

623 (2) (a) A health care provider or health care facility is not subject to civil or criminal  
624 liability or to claims of unprofessional conduct for failing to act upon a health care directive, a  
625 revocation of a health care directive, or a disqualification of a surrogate until the health care  
626 provider or health care facility has received an oral directive from an ~~[individual]~~ adult or a  
627 copy of a written directive or revocation of the health care directive, or the disqualification of  
628 the surrogate.

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

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

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

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

638 (a) complying with a health care decision made by an adult with health care decision  
639 making capacity;

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

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

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

647 ~~[(d)]~~ (e) seeking a judicial determination, or requiring a surrogate to obtain a judicial

648 determination, under Section 75-2a-120 of:

- 649 (i) the validity of a health care directive;
- 650 (ii) the validity of directions from a surrogate or guardian;
- 651 (iii) the decision making capacity of an [~~individual~~] adult who challenges a physician's
- 652 finding of incapacity; or
- 653 (iv) the authority of a guardian or surrogate; or
- 654 [~~(e)~~] (f) complying with an advance health care directive and assuming that the
- 655 directive was valid when made, and has not been revoked or terminated.

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

- 657 (i) cooperate with a person authorized under this chapter to make written directives
- 658 concerning health care;
- 659 (ii) unless the provisions of Subsection (4)(b) apply, comply with:
- 660 (A) a health care decision of an [~~individual~~] adult; and
- 661 (B) a health care decision made by [~~a~~] the highest ranking surrogate then authorized to
- 662 make health care decisions for an [~~individual~~] adult, to the same extent as if the decision had
- 663 been made by [~~the individual; and~~] the adult;

664 (iii) before implementing a health care decision made by a surrogate, make a

665 reasonable attempt to communicate to the [~~individual~~] adult on whose behalf the decision is

666 made:

- 667 (A) the decision made; and
- 668 (B) the identity of the surrogate making the decision.
- 669 (b) A health care provider or health care facility may decline to comply with a [~~health~~
- 670 ~~care instruction or~~] health care decision if:

- 671 (i) in the opinion of the health care provider:
- 672 (A) the [~~individual~~] adult who made the decision lacks health care decision making
- 673 capacity;
- 674 (B) the surrogate who made the decision lacks health care decision making capacity;
- 675 (C) the health care provider has evidence that the surrogate's instructions are
- 676 inconsistent with the [~~individual's~~] adult's health care instructions, or, for [~~an individual~~] a
- 677 person who has always lacked health care decision making capacity, that the surrogate's
- 678 instructions are inconsistent with the best interest of the [~~individual~~] adult; or

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

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

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

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

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

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

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

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

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

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

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

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

705 (v) unless [~~the individual~~] an adult or surrogate then authorized to make health care  
706 decisions for [~~an individual~~] the adult refuses assistance, immediately make all reasonable  
707 efforts to assist in the transfer of the [~~individual~~] adult to another health care facility that will  
708 carry out the instructions or decisions.

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

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

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

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

715 **75-2a-117. Optional form.**

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

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

719 Utah Advance Health Care Directive

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

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

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

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

725 Part IV: Makes your directive legal.

726 \_\_\_\_\_

727 My Personal Information

728 Name: \_\_\_\_\_

729 Street Address: \_\_\_\_\_

730 City, State, Zip Code:

731 \_\_\_\_\_

732 Telephone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

733 Birth date: \_\_\_\_\_

734 \_\_\_\_\_

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

736 A. No Agent

737 If you do not want to name an agent: initial the box below, then go to Part II; do not name an  
738 agent in B or C below. No one can force you to name an agent.

739 \_\_\_\_\_ I do not want to choose an agent. [~~Initial this paragraph if you do not want to~~  
740 ~~name an agent, then go to Part II. Do not name an agent below. No individual, organization,~~



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

742 B. My Agent

743 Agent's Name:

744 \_\_\_\_\_

745 Street Address:

746 \_\_\_\_\_

747 City, State, Zip Code:

748 \_\_\_\_\_

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

750 C. My Alternate Agent

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

753 Alternate Agent's Name:

754 \_\_\_\_\_

755 Street Address:

756 \_\_\_\_\_

757 City, State, Zip Code:

758 \_\_\_\_\_

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

760 D. Agent's Authority

761 If I cannot make decisions or speak for myself, my agent [~~can~~] has the power to make any  
762 health care decision I could have made such as, but not limited to:

763 [~~1~~] • Consent to, refuse, or withdraw any health care. This may include care to prolong my  
764 life such as food and fluids by tube, use of antibiotics, CPR (cardiopulmonary resuscitation),  
765 and dialysis, and mental health care, such as convulsive therapy and psychoactive medications.

766 This authority is subject to any limits in paragraph F of [~~this section~~] Part I or in Part II of this  
767 directive.

768 [~~2~~] • Hire and fire health care providers.

769 [~~3~~] • Ask questions and get answers from health care providers.

770 [~~4~~] • Consent to admission or transfer to a health care provider or health care facility,  
771 including a mental health facility, subject to any limits in paragraphs E [~~or~~] and F of [~~this~~

772 ~~section]~~ Part I.

773 ~~[5:]~~ • Get copies of my medical records.

774 ~~[6:]~~ • Ask for consultations or second opinions.

775 My agent cannot force health care against my will, even if a physician has found that I lack

776 health care decision making capacity.

777 E. Other Authority

778 My agent has the powers below ONLY IF I ~~[place a check next to]~~ initial the "yes" [in] option

779 that precedes the statement. I authorize my agent to:

780 ~~[Yes]~~ YES \_\_\_\_\_ ~~NO~~ \_\_\_\_\_ Get copies of my medical records at any time, even when

781 I can speak for myself.

782 ~~[Yes]~~ YES \_\_\_\_\_ ~~[No]~~ NO \_\_\_\_\_ Admit me to a licensed health care facility, such as a

783 hospital, nursing home, assisted living, or other ~~[congregate]~~ facility for long-term placement

784 other than convalescent or recuperative care~~[, unless I agree to be admitted at that time].~~

785 F. Limits/Expansion of Authority

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

787 \_\_\_\_\_

788 \_\_\_\_\_

789 G. Nomination of Guardian

790 Even though appointing an agent should help you avoid a guardianship, a guardianship may

791 still be necessary. Initial the "YES" option if you want the court to appoint your agent or, if

792 your agent is unable or unwilling to serve, your alternate agent, to serve as your guardian, if a

793 guardianship is ever necessary.

794 ~~[Yes]~~ YES \_\_\_\_\_ ~~[No]~~ NO \_\_\_\_\_ ~~[By appointing an agent in this document, I intend to~~

795 ~~avoid guardianship. If I must have a guardian, I want my agent to be my guardian.]~~

796 I, being of sound mind and not acting under duress, fraud, or other undue influence, do hereby

797 nominate my agent, or if my agent is unable or unwilling to serve, I hereby nominate my

798 alternate agent, to serve as my guardian in the event that, after the date of this instrument, I

799 become incapacitated.

800 H. Consent to Participate in Medical Research

801 ~~[Yes]~~ YES \_\_\_\_\_ ~~[No]~~ NO \_\_\_\_\_ I authorize my agent to consent to my participation in

802 medical research or clinical trials, even if I may not benefit from the results.

803 I. ~~[Consent to]~~ Organ Donation  
 804 [~~Yes~~] YES \_\_\_\_\_ [~~No~~] NO \_\_\_\_\_ If I have not otherwise agreed to organ donation, my  
 805 agent may consent to the donation of my organs for the purpose of organ transplantation.  
 806 ~~[J. Agent's Authority to Override Expressed Wishes]~~  
 807 [~~Yes~~ \_\_\_\_\_ ~~No~~ \_\_\_\_\_ ~~My agent may make decisions about health care that are different from~~  
 808 ~~the instructions in Part II of this form.~~]

809 \_\_\_\_\_

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

811 I want my health care providers to follow the instructions I give them when I am being treated[;  
 812 ~~so long as I can make health care decisions~~], even if [~~the~~] my instructions [~~appear to~~] conflict  
 813 with these or other advance directives. My health care providers should always provide  
 814 [~~comfort measures and~~] health care to keep me as comfortable and functional as possible.  
 815 Choose only one of the following options, numbered Option 1 through Option 4, by placing  
 816 your initials before the numbered statement [~~that reflects your wishes~~]. Do not initial more  
 817 than one option. If you do not wish to document end-of-life wishes, initial Option 4. You may  
 818 choose to draw a line through the options that you are not choosing.

819 Option 1

820 [~~I~~] \_\_\_\_\_ Initial

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

825 Additional Comments:

826 \_\_\_\_\_

827 Option 2

828 \_\_\_\_\_ Initial

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

832 Other:

833 \_\_\_\_\_

834 Option 3

835 \_\_\_\_\_ Initial

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

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

841 \_\_\_\_\_ Initial

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

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

845 \_\_\_\_\_ Initial

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

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

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

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

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

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

855 Other:

856 \_\_\_\_\_

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

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

865 my health care provider should not provide care to prolong my life.]

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

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

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

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

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

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

874 Option 4

875 \_\_\_\_\_ Initial

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

877 Other:

878 \_\_\_\_\_

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

880 \_\_\_\_\_

881 \_\_\_\_\_

882 Part III: Revoking [My] or Changing a Directive

883 I may revoke or change this directive by:

884 1. Writing "void" across the form, or burning, tearing, or otherwise destroying or defacing

885 [~~the~~] this document or [asking] directing another person to do the same on my behalf;

886 2. Signing a written revocation of the directive, or directing another person to sign a [~~written~~]  
887 revocation on my behalf;

888 3. Stating that I wish to revoke the directive in the presence of a witness who [~~meets the~~  
889 ~~requirements of the witness in Part IV, below, and who will not be appointed as agent or~~  
890 ~~become a default surrogate when the directive is revoked; or~~]; is 18 years of age or older; will  
891 not be appointed as my agent in a substitute directive; will not become a default surrogate if the  
892 directive is revoked; and signs and dates a written document confirming my statement; or

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

895 Part IV: Making My Directive Legal

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

900 [~~Date:~~] \_\_\_\_\_

901 Date

902 [~~Signature:~~] \_\_\_\_\_

903 Signature

904 \_\_\_\_\_

905 City, County, and State of Residence

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

- 907 1. related to the declarant by blood or marriage;
- 908 2. entitled to any portion of the declarant's estate according to the laws of intestate succession
- 909 of [~~Utah~~] any state or jurisdiction or under any will or codicil of the declarant;
- 910 3. a beneficiary of a life insurance policy, trust, qualified plan, pay on death account, or
- 911 transfer or death deed that is held, owned, made, or established by, or on behalf of, the
- 912 declarant;
- 913 4. entitled to benefit financially upon the death of the declarant;
- 914 5. entitled to a right to, or interest in, real or personal property upon the death of the declarant;
- 915 [~~3:~~] 6. directly financially responsible for the declarant's medical care;
- 916 [~~4:~~] 7. a health care provider who is providing care to the declarant or an administrator at a
- 917 health care facility in which the declarant is receiving care; or
- 918 [~~5:~~] 8. the appointed agent or alternate agent.

919 [~~Signature of Witness:~~]

920 \_\_\_\_\_

921 Signature of Witness

\_\_\_\_\_

Printed Name of Witness

922 \_\_\_\_\_

923 Street Address

\_\_\_\_\_

City

\_\_\_\_\_

State

\_\_\_\_\_

Zip Code

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

926 \_\_\_\_\_

927

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

929 **75-2a-118. Illegal destruction or falsification of health care directive.**

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

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

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

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

936 (a) the person:

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

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

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

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

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

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

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

946 **75-2a-119. Health care directive effect on insurance policies.**

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

949 (a) the obligation of any life or medical insurance company regarding any policy of life  
950 or medical insurance;

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

952 (c) the terms of any existing policy.

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

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

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

957 (b) Following health care instructions in a health care directive does not constitute

958 legal cause for failing to pay life or health insurance benefits. Death that occurs after following  
959 the instructions of an advance health care directive or a surrogate's instructions does not for any  
960 purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or  
961 an annuity providing a death benefit.

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

- 965 (i) a health care provider;
- 966 (ii) a health care facility;
- 967 (iii) a health maintenance organization;
- 968 (iv) an insurer issuing disability, health, or life insurance;
- 969 (v) a self-insured employee welfare or benefit plan;
- 970 (vi) a nonprofit medical service corporation or mutual nonprofit hospital service  
971 corporation; or

972 (vii) any other person, firm, or entity.

973 (b) Nothing in this chapter:

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

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

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

981 Section 18. Section **75-2a-120** is amended to read:

982 **75-2a-120. Judicial relief.**

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

- 985 (1) a patient;
- 986 (2) an agent of a patient;
- 987 (3) a guardian of a patient;
- 988 (4) a default surrogate of a patient;



- 989 (5) a health care provider of a patient;
- 990 (6) a health care facility providing care for a patient; or
- 991 (7) an individual who meets the requirements of Section 75-2a-108.

992 Section 19. Section **75-2a-121** is amended to read:

993 **75-2a-121. Reciprocity.**

994 Unless otherwise provided in the health care directive:

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

- 997 (a) executed in another state; or
- 998 (b) executed prior to January 1, 2008, in this state under the provisions of Chapter 2,  
999 Part 11, Personal Choice and Living Will Act; [~~and~~]

1000 (2) a health care directive executed under the provisions of this chapter shall be  
 1001 governed pursuant to the provisions of this chapter that were in effect at that time, unless it  
 1002 appears from the directive that the declarant intended the current provisions of this chapter to  
 1003 apply; and

1004 [~~(2)~~] (3) the health care directive described in Subsection (1) is presumed to comply  
1005 with the requirements of this chapter.

1006 Section 20. Section **75-2a-122** is amended to read:

1007 **75-2a-122. Effect of act.**

1008 The Advance Health Care Directive Act created in this chapter does not:

1009 (1) create a presumption concerning the intention of an [~~individual~~] adult who has not  
1010 made or who has revoked an advance health care directive;

1011 (2) authorize mercy killing, assisted suicide, or euthanasia; [~~and~~] or

1012 (3) authorize the provision, withholding, or withdrawal of health care, to the extent  
1013 prohibited by the laws of this state.

1014 Section 21. Section **75-2a-124** is amended to read:

1015 **75-2a-124. Provisions cumulative with existing law.**

1016 The provisions of this chapter are cumulative with existing law regarding [~~an~~  
 1017 ~~individual's~~] a person's right to consent or refuse to consent to medical treatment and do not  
 1018 impair any existing rights or responsibilities that a health care provider, [~~an individual~~] a  
 1019 person, including a minor or incapacitated [~~individual~~] person, or [~~an individual's~~] a person's

1020 family or surrogate may have in regard to the provision, withholding or withdrawal of life  
1021 sustaining procedures under the common law or statutes of the state.

1022 Section 22. Section **75-2a-125** is enacted to read:

1023 **75-2a-125. Severability.**

1024 If any one or more provision, section, subsection, sentence, clause, phrase, or word of  
1025 this chapter, or the application of this chapter to any person or circumstance, is found to be  
1026 unconstitutional, the same is hereby declared to be severable and the balance of this chapter  
1027 shall remain effective notwithstanding such unconstitutionality. The Legislature hereby  
1028 declares that it would have passed this chapter, and each provision, section, subsection,  
1029 sentence, clause, phrase, or word of this chapter, irrespective of the fact that any one or more  
1030 provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

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**Legislative Review Note**  
as of 1-23-08 3:46 PM

**Office of Legislative Research and General Counsel**

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**S.B. 161 - Advance Health Care Directive Amendments**

**Fiscal Note**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**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.

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