

Representative Steven R. Mascaro proposes the following substitute bill:

ADVANCE HEALTH CARE DIRECTIVE

AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Allen M. Christensen

House Sponsor: Steven R. Mascaro

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;
- ▶ replaces the physician order for life sustaining treatment form with a life with dignity order and establishes procedures and requirements relating to the order;
- ▶ 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



26 before 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-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-123**, as enacted by Laws of Utah 2007, Chapter 31

54 **75-2a-124**, as enacted by Laws of Utah 2007, Chapter 31

55 **ENACTS:**

56 **75-2a-125**, Utah Code Annotated 1953

57 REPEALS AND REENACTS:

58 **75-2a-106**, as enacted by Laws of Utah 2007, Chapter 31



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

61 Section 1. Section **75-2a-102** is amended to read:

62 **75-2a-102. Intent statement.**

63 (1) The Legislature finds:

64 (a) developments in health care technology make possible many alternatives for
65 treating medical conditions and make possible the unnatural prolongation of life;

66 (b) [~~individuals~~] an adult should have the clear legal choice to:

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

69 (ii) be spared unwanted procedures; and

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

72 (c) Utah law should:

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

77 (ii) promote [~~a~~] an advance health care directive system that can be administered
78 effectively within the health care system;

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

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

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

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

87 and

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

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

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

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

98 (b) withhold or withdraw health care; or

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

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

102 **75-2a-103. Definitions.**

103 As used in this chapter:

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

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

106 (b) an emancipated minor.

107 (2) "Advance health care directive":

108 (a) includes:

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

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

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

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

115 (ii) a witnessed oral statement, made in accordance with the requirements of this
116 chapter; and

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

118 [(+)] (3) "Agent" means a person designated in an advance health care directive to

119 make health care decisions for the declarant.

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

121 (a) certified or licensed as an advance practice registered nurse under Subsection
122 58-31b-301(2)(d);

123 (b) an independent practitioner;

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

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

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

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

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

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

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

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

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

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

145 ~~(3)~~ (6) "Capacity to appoint an agent" means that the [individual] adult understands
146 the consequences of appointing a particular person as agent.

147 ~~(4)~~ (7) "Declarant" means an [individual] adult who has completed and signed or
148 directed the signing of [a] an advance health care directive.

149 ~~(5)~~ (8) "Default surrogate ~~[decision-maker]~~" means the [person] adult who may make

150 decisions for an individual when either:

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

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

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

157 [~~(6)~~] (10) "Generally accepted health care standards":

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

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

161 (ii) enabling health care providers to interpret the statutory form set forth in Section
162 75-2a-117; and

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

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

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

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

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

171 [~~(8)~~] (11) "Health care" means any care, treatment, service, or procedure to improve,
172 maintain, diagnose, or otherwise affect [~~an individual's~~] a person's physical or mental
173 condition.

174 [~~(9)~~] (12) "Health care decision":

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

178 (b) includes:

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

180 (ii) approval or disapproval of diagnostic tests, procedures, programs of medication,

181 and orders not to resuscitate; and

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

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

186 [~~(10)~~] (13) "Health care decision making capacity" means an [~~individual's~~] adult's
187 ability to make an informed decision about receiving or refusing health care, including:

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

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

192 (c) the ability to communicate a decision.

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

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

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

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

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

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

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

203 [~~(12)~~] (14) "Health care facility" means:

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

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

208 [~~(13)~~] (15) "Health care provider" is as defined in Section 78-14-3, except that it does
209 not include an emergency medical services provider.

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

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

212 ~~[(i) a person 18 years of age or older; or]~~
213 ~~[(ii) an emancipated minor as defined in Sections 78-3a-1001 to 78-3a-1105; and]~~
214 ~~[(b) includes:]~~
215 ~~[(i) a declarant; and]~~
216 ~~[(ii) a person who has not completed an advance health care directive.]~~
217 (16) (a) "Life sustaining care" means any medical intervention, including procedures,
218 administration of medication, or use of a medical device, that maintains life by sustaining,
219 restoring, or supplanting a vital function.
220 (b) "Life sustaining care" does not include care provided for the purpose of keeping a
221 person comfortable.
222 (17) "Life with dignity order" means an order, designated by the Department of Health
223 under Section 75-2a-106(5)(a), that gives direction to health care providers, health care
224 facilities, and emergency medical services providers regarding the specific health care
225 decisions of the person to whom the order relates.
226 (18) "Minor" means a person who:
227 (a) is under 18 years of age; and
228 (b) is not an emancipated minor.
229 (19) "Physician" means a physician and surgeon or osteopathic surgeon licensed under
230 Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical
231 Practice Act.
232 ~~[(15)]~~ (20) "Reasonably available" means:
233 (a) readily able to be contacted without undue effort; and
234 (b) willing and able to act in a timely manner considering the urgency of the
235 ~~[individual's health care needs]~~ circumstances.
236 (21) "Substituted judgment" means the standard to be applied by a surrogate when
237 making a health care decision for an adult who previously had the capacity to make health care
238 decisions, which requires the surrogate to consider:
239 (a) specific preferences expressed by the adult:
240 (i) when the adult had the capacity to make health care decisions; and
241 (ii) at the time the decision is being made;
242 (b) the surrogate's understanding of the adult's health care preferences;

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

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

247 [(16)] (22) "Surrogate" means a health care decision maker who is:

248 (a) an appointed agent;

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

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

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

252 **75-2a-104. Capacity to make health care decisions -- Presumption -- Overcoming**
253 **presumption.**

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

255 (a) health care decision making capacity; and

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

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

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

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

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

264 (i) the [~~individual~~] adult;

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

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

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

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

273 (ii) orally informing the health care provider that the [~~individual~~] adult disagrees with

274 the [physician's] finding.

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

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

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

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

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

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

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

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

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

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

300 **75-2a-105. Capacity to complete an advance health care directive.**

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

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

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

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

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

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

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

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

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

322 **75-2a-106. Emergency medical services -- Life with dignity order.**

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

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

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

328 (b) a health care provider who:

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

330 (ii) is:

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

332 (B) a physician assistant, licensed under Title 58, Chapter 70a, Physician Assistant

333 Act;

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

335 Professional Practice Act; or

336 (D) another health care provider, designated by rule as described in Subsection (10).
337 (3) A life with dignity order shall be signed:
338 (a) personally, by the physician or APRN of the person to whom the life with dignity
339 order relates; and
340 (b) (i) if the person to whom the life with dignity order relates is an adult with health
341 care decision making capacity, by:
342 (A) the person; or
343 (B) an adult who is directed by the person to sign the life with dignity order on behalf
344 of the person;
345 (ii) if the person to whom the life with dignity order relates is an adult who lacks health
346 care decision making capacity, by:
347 (A) the surrogate with the highest priority under Section 75-2a-111;
348 (B) the majority of the class of surrogates with the highest priority under Section
349 75-2a-111; or
350 (C) a person directed to sign the order by, and on behalf of, the persons described in
351 Subsection (3)(b)(ii)(a) or (B); or
352 (iii) if the person to whom the life with dignity order relates is a minor, by a parent or
353 guardian of the minor.
354 (4) If a life with dignity order relates to a minor and directs that life sustaining
355 treatment be withheld or withdrawn from the minor, the order shall include a certification by
356 two physicians that, in their clinical judgment, an order to withhold or withdraw life sustaining
357 treatment is in the best interest of the minor.
358 (5) A life with dignity order:
359 (a) shall be in writing, on a form approved by the Department of Health;
360 (b) shall state the date on which the order was made;
361 (c) may specify the level of life sustaining care to be provided to the person to whom
362 the order relates; and
363 (d) may direct that life sustaining care be withheld or withdrawn from the person to
364 whom the order relates.
365 (6) A health care provider or emergency medical service provider, licensed or certified
366 under Title 26, Chapter 8a, Utah Emergency Medical Services System Act, is immune from

367 civil or criminal liability, and is not subject to discipline for unprofessional conduct, for:

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

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

371 (7) To the extent that the provisions of a life with dignity order described in this
372 section conflict with the provisions of an advance health care directive made under Section
373 75-2a-107, the provisions of the life with dignity order take precedence.

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

376 (a) orally informing emergency service personnel;

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

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

379 (i) the form; or

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

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

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

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

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

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

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

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

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

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

398 the emergency ends.

399 (10) (a) The Department of Health shall adopt rules, in accordance with Title 63,

400 Chapter 46a, Utah Administrative Rulemaking Act, to:

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

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

403 (b) The Department of Health may adopt rules, in accordance with Title 63, Chapter
 404 46a, Utah Administrative Rulemaking Act, to designate health care professionals, in addition to
 405 those described in Subsection (2)(b)(ii), who may prepare a life with dignity order.

406 (c) The Department of Health may assist others with training of health care
 407 professionals regarding this chapter.

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

409 **75-2a-107. Advance health care directive -- Appointment of agent -- Powers of**
 410 **agent -- Health care directions.**

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

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

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

416 (iii) choose not to give directions;

417 [~~(iii)~~] (iv) state conditions that must be met before life sustaining treatment may be
 418 withheld or withdrawn;

419 [~~(iv)~~] (v) authorize an agent to consent to the [~~individual's~~] adult's participation in
 420 medical research;

421 [~~(v)~~] (vi) nominate a guardian;

422 [~~(vi)~~] (vii) authorize an agent to consent to organ donation;

423 [~~(vii)~~] (viii) expand or limit the powers of a health care agent; and

424 [~~(viii)~~] (ix) designate the agent's access to the [~~individual's~~] adult's medical records.

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

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

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

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

430 (iii) entitled to any portion of the declarant's estate according to the laws of intestate

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

432 (iv) the beneficiary of any of the following that are held, owned, made, or established

433 by, or on behalf of, the declarant:

434 (A) a life insurance policy;

435 (B) a trust;

436 (C) a qualified plan;

437 (D) a pay on death account; or

438 (E) a transfer on death deed;

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

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

441 declarant;

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

443 ~~[(v)]~~ (viii) a health care provider who is:

444 (A) providing care to the declarant; or

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

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

447 (d) The witness to an oral advance health care directive shall state the circumstances

448 under which the directive was made.

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

450 ~~[(a) is effective only after a physician makes a determination of incapacity as provided~~

451 ~~in Section 75-2a-104;]~~

452 ~~[(b) remains in effect during any period of time in which the declarant lacks capacity to~~

453 ~~appoint an agent or make health care decisions; and]~~

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

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

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

457 ~~capacity;]~~

458 ~~[(iii) a court issues an order invalidating a health care directive or the application of the~~

459 ~~health care directive; or]~~

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

462 ~~[(3)]~~ (2) An agent appointed under the provisions of this section may not be a health
463 care provider for the declarant, or an owner, operator, or employee of the health care facility at
464 which the declarant is receiving care unless the agent is related to the declarant by blood,
465 marriage, or adoption.

466 ~~[(4) If the declarant does not specify the agent's access to medical records in an~~
467 ~~advance health care directive, the agent's access to medical records is governed by Section~~
468 ~~75-2a-113.]~~

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

470 **75-2a-108. Default surrogates.**

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

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

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

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

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

477 (A) over 18 years of age;

478 (B) has health care decision making capacity;

479 (C) is reasonably available; and

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

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

486 (i) the ~~[individual's]~~ adult's spouse, unless~~[-(A)]~~ the adult is divorced or legally
487 separated ~~[from the individual];~~ or

488 ~~[(B) a court finds that the spouse has acted in a manner that should preclude the spouse~~
489 ~~from having a priority position as a default surrogate;]~~

490 (ii) the following family members:

- 491 [(ii)] (A) a child;
- 492 [(iii)] (B) a parent;
- 493 [(iv)] (C) a sibling;
- 494 [~~(v)~~] a grandparent; or]
- 495 [(vi)] (D) a grandchild[-]; or
- 496 (E) a grandparent.
- 497 (c) A person described in Subsection (1)(b), may not direct an adult's care if a person of
- 498 a higher priority class is able and willing to act as a surrogate for the adult.
- 499 (d) A court may disqualify a person described in Subsection (1)(b) from acting as a
- 500 surrogate if the court finds that the person has acted in a manner that is inconsistent with the
- 501 position of trust in which a surrogate is placed.
- 502 (2) If the family members designated in Subsection (1)(b) are not reasonably available
- 503 to act as a surrogate [~~decision maker~~], a person who is 18 years of age or older, other than those
- 504 designated in Subsection (1) may act as a surrogate if the person:
- 505 (a) has health care decision making capacity;
- 506 (b) has exhibited special care and concern for the patient;
- 507 (c) [~~is familiar with~~] knows the patient and the patient's personal values; and
- 508 (d) is reasonably available to act as a surrogate.
- 509 (3) The surrogate shall communicate the surrogate's assumption of authority as
- 510 promptly as practicable to the members of a class who:
- 511 (a) have an equal or higher priority and are not acting as surrogate; and
- 512 (b) can be readily contacted.
- 513 (4) A health care provider shall comply with the decision of a majority of the members
- 514 of [a] the highest priority class who have communicated their views to the provider if:
- 515 (a) more than one member of [a] the highest priority class assumes authority to act as
- 516 default surrogate;
- 517 (b) the members of the class do not agree on a health care decision; and
- 518 (c) the health care provider is informed of the disagreement among the members of the
- 519 class.
- 520 (5) (a) [~~The individual~~] An adult may at any time disqualify a default surrogate,
- 521 including a member of the [~~individual's~~] adult's family, from acting as the [~~individual's~~] adult's

522 surrogate by:

523 (i) a signed writing;

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

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

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

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

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

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

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

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

536 [~~(6)~~] (7) If reasonable doubt exists regarding the status of an [~~individual~~] adult
537 claiming the right to act as a default surrogate, the health care provider may:

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

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

541 [~~(7)~~] (8) A health care provider may seek a ruling from a court pursuant to Section
542 75-2a-120 if the health care provider has evidence that a surrogate is making decisions that are
543 inconsistent with [~~the individual's~~] an adult patient's wishes or preferences.

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

545 **75-2a-109. Effect of current health care preferences -- When a surrogate may act.**

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

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

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

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

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

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

563 (c) ceases to be effective when:

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

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

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

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

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

571 **75-2a-110. Surrogate decision making -- Scope of authority.**

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

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

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

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

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

582 (c) the substituted judgment standard.

583 [~~(3)~~] (2) A surrogate acting under authority of Sections 75-2a-107 and 75-2a-108:

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

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

590 ~~[(4)]~~ (3) A surrogate acting under authority of this section is not subject to civil or
591 criminal liability or claims of unprofessional conduct for surrogate health care decisions made:

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

593 (b) in good faith.

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

595 **75-2a-111. Priority of decision makers.**

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

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

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

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

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

604 ~~[(3)]~~ (c) [a] the highest priority default surrogate acting under authority of Section
605 75-2a-108.

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

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

610 **75-2a-112. Decisions by guardian.**

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

614 (2) A health care decision of an agent takes precedence over that of a guardian, in the

615 absence of a court order to the contrary.

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

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

620 (a) in good faith; and

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

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

623 **75-2a-113. Personal representative status.**

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

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

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

630 (a) in writing; or

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

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

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

635 **75-2a-114. Revocation of directive.**

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

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

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

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

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

642 (i) the declarant; or

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

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

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

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

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

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

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

653 (A) a life insurance policy;

654 (B) a trust;

655 (C) a qualified plan;

656 (D) a pay on death account; or

657 (E) a transfer on death deed;

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

659 (v) entitled to a right to, or interest in, real or personal property upon the death of the
660 declarant;

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

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

663 (A) providing care to the declarant; or

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

665 [~~(v)~~] (viii) the [~~person~~] adult who will become agent or default surrogate after the
666 revocation[~~; or~~].

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

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

670 [~~(i)~~] (b) the declarant has affirmed the intent to retain the agent subsequent to the
671 annulment, divorce, or legal separation.

672 [~~(2)~~] (3) An advance health care directive that conflicts with an earlier advance health
673 care directive revokes the earlier directive to the extent of the conflict.

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

675 **75-2a-115. Notification to health care provider -- Obligations of health care**
676 **providers -- Liability.**

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

- 680 (a) the existence of a health care directive;
- 681 (b) the revocation of a health care directive;
- 682 (c) the existence or revocation of appointment of an agent or default surrogate;
- 683 (d) the disqualification of a default surrogate; or
- 684 (e) the appointment or revocation of appointment of a guardian.

685 (2) (a) A health care provider or health care facility is not subject to civil or criminal
686 liability or to claims of unprofessional conduct for failing to act upon a health care directive, a
687 revocation of a health care directive, or a disqualification of a surrogate until the health care
688 provider or health care facility has received an oral directive from an ~~[individual]~~ adult or a
689 copy of a written directive or revocation of the health care directive, or the disqualification of
690 the surrogate.

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

- 693 (i) the health care directive or a copy of it, a revocation of a health care directive, or a
694 disqualification of a surrogate; and
- 695 (ii) the date, time, and place in which any written or oral notice of the document
696 described in this Subsection (2)(b) is received.

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

700 (a) complying with a health care decision made by an adult with health care decision
701 making capacity;

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

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

707 ~~[(c)]~~ (d) declining to comply with a health care decision of an ~~[individual]~~ adult who

708 lacks decision making capacity;

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

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

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

713 (iii) the decision making capacity of an ~~[individual]~~ adult who challenges a physician's
 714 finding of incapacity; or

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

716 ~~[(e)]~~ (f) complying with an advance health care directive and assuming that the
 717 directive was valid when made, and has not been revoked or terminated.

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

719 (i) cooperate with a person authorized under this chapter to make written directives
 720 concerning health care;

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

722 (A) a health care decision of an ~~[individual]~~ adult; and

723 (B) a health care decision made by ~~[a]~~ the highest ranking surrogate then authorized to
 724 make health care decisions for an ~~[individual]~~ adult, to the same extent as if the decision had
 725 been made by ~~[the individual; and]~~ the adult;

726 (iii) before implementing a health care decision made by a surrogate, make a
 727 reasonable attempt to communicate to the ~~[individual]~~ adult on whose behalf the decision is
 728 made:

729 (A) the decision made; and

730 (B) the identity of the surrogate making the decision.

731 (b) A health care provider or health care facility may decline to comply with a ~~[health~~
 732 ~~care instruction or]~~ health care decision if:

733 (i) in the opinion of the health care provider:

734 (A) the ~~[individual]~~ adult who made the decision lacks health care decision making
 735 capacity;

736 (B) the surrogate who made the decision lacks health care decision making capacity;

737 (C) the health care provider has evidence that the surrogate's instructions are

738 inconsistent with the ~~[individual's]~~ adult's health care instructions, or, for ~~[an individual]~~ a

739 person who has always lacked health care decision making capacity, that the surrogate's
740 instructions are inconsistent with the best interest of the [~~individual~~] adult; or

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

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

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

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

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

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

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

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

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

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

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

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

767 (v) unless [~~the individual~~] an adult or surrogate then authorized to make health care
768 decisions for [~~an individual~~] the adult refuses assistance, immediately make all reasonable
769 efforts to assist in the transfer of the [~~individual~~] adult to another health care facility that will

770 carry out the instructions or decisions.

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

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

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

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

777 **75-2a-117. Optional form.**

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

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

781 Utah Advance Health Care Directive

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

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

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

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

787 Part IV: Makes your directive legal.

788 _____

789 My Personal Information

790 Name: _____

791 Street Address: _____

792 City, State, Zip Code:

793 _____

794 Telephone: _____ Cell Phone: _____

795 Birth date: _____

796 _____

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

798 A. No Agent

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

801 _____ I do not want to choose an agent. [~~Initial this paragraph if you do not want to~~
802 ~~name an agent, then go to Part II. Do not name an agent below. No individual, organization,~~
803 ~~family member, health care provider, lawyer, or insurer should force you to name an agent.]~~

804 B. My Agent

805 Agent's Name:

806 _____

807 Street Address:

808 _____

809 City, State, Zip Code:

810 _____

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

812 C. My Alternate Agent

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

815 Alternate Agent's Name:

816 _____

817 Street Address:

818 _____

819 City, State, Zip Code:

820 _____

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

822 D. Agent's Authority

823 If I cannot make decisions or speak for myself (in other words, after my physician or APRN
824 finds that I lack health care decision making capacity under Section 75-2a-104 of the Advance
825 Health Care Directive Act), my agent [~~can~~] has the power to make any health care decision I
826 could have made such as, but not limited to:

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

832 [2:] • Hire and fire health care providers.

833 [3:] • Ask questions and get answers from health care providers.

834 [4:] • Consent to admission or transfer to a health care provider or health care facility,
835 including a mental health facility, subject to any limits in paragraphs E ~~[or]~~ and F of ~~[this~~
836 ~~section]~~ Part I.

837 [5:] • Get copies of my medical records.

838 [6:] • Ask for consultations or second opinions.

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

841 E. Other Authority

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

844 [~~Yes~~] YES _____ NO _____ Get copies of my medical records at any time, even when
845 I can speak for myself.

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

849 F. Limits/Expansion of Authority

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

851 _____
852 _____

853 G. Nomination of Guardian

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

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

860 I, being of sound mind and not acting under duress, fraud, or other undue influence, do hereby
861 nominate my agent, or if my agent is unable or unwilling to serve, I hereby nominate my
862 alternate agent, to serve as my guardian in the event that, after the date of this instrument, I

863 become incapacitated.

864 H. Consent to Participate in Medical Research

865 [~~Yes~~] YES _____ [~~No~~] NO _____ I authorize my agent to consent to my participation in
866 medical research or clinical trials, even if I may not benefit from the results.

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

868 [~~Yes~~] YES _____ [~~No~~] NO _____ If I have not otherwise agreed to organ donation, my
869 agent may consent to the donation of my organs for the purpose of organ transplantation.

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

871 [~~Yes _____ No _____ My agent may make decisions about health care that are different from~~
872 ~~the instructions in Part II of this form.~~]

873 _____

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

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

879 Choose only one of the following options, numbered Option 1 through Option 4, by placing
880 your initials before the numbered statement [~~that reflects your wishes~~]. Do not initial more
881 than one option. If you do not wish to document end-of-life wishes, initial Option 4. You may
882 choose to draw a line through the options that you are not choosing.

883 Option 1

884 [~~1-~~] _____ Initial

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

889 Additional Comments:

890 _____

891 Option 2

892 _____ Initial

893 I choose to prolong life. Regardless of my condition or prognosis, I want my health care team

894 to try to prolong my life as long as possible within the limits of generally accepted health care
895 standards.

896 Other:

897 _____

898 Option 3

899 _____ Initial

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

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

905 _____ Initial

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

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

909 _____ Initial

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

912 [Yes _____ No] _____ I have a progressive illness that will cause death.

913 [Yes _____ No] _____ I am close to death and am unlikely to recover.

914 [Yes _____ No] _____ I cannot communicate and it is unlikely that my condition will
915 improve.

916 [Yes _____ No] _____ I do not recognize my friends or family and it is unlikely that my
917 condition will improve.

918 [Yes _____ No] _____ I am in a persistent vegetative state.

919 Other:

920 _____

921 [~~2. _____ I want to prolong life. Regardless of my condition or prognosis, I want my~~
922 ~~health care providers to try to keep me alive as long as possible, within the limits of generally~~
923 ~~accepted health care standards.]~~

924 [~~3. _____ I choose NOT to receive care for the purpose of prolonging life, including food~~

925 and fluids by tube, antibiotics, CPR, or dialysis used to prolong my life. I always want comfort
926 care and routine medical care that will keep me as comfortable and functional as possible, even
927 if that care may prolong my life. My health care provider may stop care that is prolonging my
928 life only after the conditions checked "yes" below are met. If I check "no" to all the conditions,
929 my health care provider should not provide care to prolong my life.]

930 [Yes _____ No _____ I have a progressive illness that will cause death.]

931 [Yes _____ No _____ I am close to death and am unlikely to recover.]

932 [Yes _____ No _____ I cannot communicate and it is unlikely that my condition will
933 improve.]

934 [Yes _____ No _____ I do not recognize my friends or family and it is unlikely that my
935 condition will improve.]

936 [Yes _____ No _____ I am in a persistent vegetative state.]

937 [4. _____ I choose not to provide instructions about end-of-life care in this directive.]

938 Option 4

939 _____ Initial

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

941 Other:

942 _____

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

944 _____

945 _____

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

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

950 I may revoke or change this directive by:

951 1. Writing "void" across the form, or burning, tearing, or otherwise destroying or defacing
952 [the] this document or [asking] directing another person to do the same on my behalf;

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

955 3. Stating that I wish to revoke the directive in the presence of a witness who [meets the

956 requirements of the witness in Part IV, below, and who will not be appointed as agent or
 957 become a default surrogate when the directive is revoked; or]: is 18 years of age or older; will
 958 not be appointed as my agent in a substitute directive; will not become a default surrogate if the
 959 directive is revoked; and signs and dates a written document confirming my statement; or
 960 4. Signing a new directive. (If you sign more than one Advance Health Care Directive, the
 961 most recent one applies.)

Part IV: Making My Directive Legal

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

967 [~~Date:~~] _____

968 Date

969 [~~Signature:~~] _____

970 Signature

971 _____

972 City, County, and State of Residence

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

- 974 1. related to the declarant by blood or marriage;
- 975 2. entitled to any portion of the declarant's estate according to the laws of intestate succession
 976 of [~~Utah~~] any state or jurisdiction or under any will or codicil of the declarant;
- 977 3. a beneficiary of a life insurance policy, trust, qualified plan, pay on death account, or
 978 transfer or death deed that is held, owned, made, or established by, or on behalf of, the
 979 declarant;
- 980 4. entitled to benefit financially upon the death of the declarant;
- 981 5. entitled to a right to, or interest in, real or personal property upon the death of the declarant;
- 982 [~~3:~~] 6. directly financially responsible for the declarant's medical care;
- 983 [~~4:~~] 7. a health care provider who is providing care to the declarant or an administrator at a
 984 health care facility in which the declarant is receiving care; or
- 985 [~~5:~~] 8. the appointed agent or alternate agent.

986 [~~Signature of Witness:~~]

987 _____
 988 Signature of Witness Printed Name of Witness

989 _____
 990 Street Address City State Zip Code

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

993 _____
 994 _____

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

996 **75-2a-118. Illegal destruction or falsification of health care directive.**

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

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

1000 (b) falsifies, forges, or alters a health care directive or a revocation of the health care
 1001 directive of another [~~individual~~] person.

1002 (2) A person is guilty of criminal homicide if:

1003 (a) the person:

1004 (i) falsifies or forges the health care directive of [~~another~~] an adult; or

1005 (ii) willfully conceals or withholds personal knowledge of:

1006 (A) the existence of a health care directive;

1007 [~~(A)~~] (B) the revocation of a health care directive; or

1008 [~~(B)~~] (C) the disqualification of a surrogate; and

1009 (b) the actions described in Subsection (2)(a) cause a withholding or withdrawal of life
 1010 sustaining procedures contrary to the wishes of a declarant resulting in the death of the
 1011 declarant.

1012 Section 17. Section **75-2a-119** is amended to read:

1013 **75-2a-119. Health care directive effect on insurance policies.**

1014 (1) If an [~~individual~~] adult makes a health care directive under this chapter, the health
 1015 care directive does not affect in any manner:

1016 (a) the obligation of any life or medical insurance company regarding any policy of life
 1017 or medical insurance;

1018 (b) the sale, procurement, or issuance of any policy of life or health insurance; or

1019 (c) the terms of any existing policy.

1020 (2) (a) Notwithstanding any terms of an insurance policy to the contrary, an insurance
1021 policy is not legally impaired or invalidated in any manner by:

1022 (i) withholding or withdrawing life sustaining procedures; or

1023 (ii) following directions in a health care directive executed as provided in this chapter.

1024 (b) Following health care instructions in a health care directive does not constitute
1025 legal cause for failing to pay life or health insurance benefits. Death that occurs after following
1026 the instructions of an advance health care directive or a surrogate's instructions does not for any
1027 purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or
1028 an annuity providing a death benefit.

1029 (3) (a) The following may not require an [~~individual~~] adult to execute a directive or to
1030 make any particular choices or entries in a directive under this chapter as a condition for being
1031 insured for or receiving health care or life insurance contract services:

1032 (i) a health care provider;

1033 (ii) a health care facility;

1034 (iii) a health maintenance organization;

1035 (iv) an insurer issuing disability, health, or life insurance;

1036 (v) a self-insured employee welfare or benefit plan;

1037 (vi) a nonprofit medical service corporation or mutual nonprofit hospital service
1038 corporation; or

1039 (vii) any other person, firm, or entity.

1040 (b) Nothing in this chapter:

1041 (i) may be construed to require an insurer to insure risks otherwise considered by the
1042 insurer as not a covered risk;

1043 (ii) is intended to impair or supersede any other legal right or legal responsibility which
1044 an [~~individual~~] adult may have to effect the withholding or withdrawal of life sustaining
1045 procedures in any lawful manner; or

1046 (iii) creates any presumption concerning the intention of an [~~individual~~] adult who has
1047 not executed a health care directive.

1048 Section 18. Section **75-2a-120** is amended to read:

1049 **75-2a-120. Judicial relief.**

1050 A district court may enjoin or direct a health care decision, or order other equitable
1051 relief based on a petition filed by:

- 1052 (1) a patient;
- 1053 (2) an agent of a patient;
- 1054 (3) a guardian of a patient;
- 1055 (4) a default surrogate of a patient;
- 1056 (5) a health care provider of a patient;
- 1057 (6) a health care facility providing care for a patient; or
- 1058 (7) an individual who meets the requirements of Section 75-2a-108.

1059 Section 19. Section **75-2a-121** is amended to read:

1060 **75-2a-121. Reciprocity -- Application of former provisions of law.**

1061 Unless otherwise provided in the health care directive:

1062 (1) a health care provider or health care facility may, in good faith, rely on any health
1063 care directive, power of attorney, or similar instrument:

- 1064 (a) executed in another state; or
- 1065 (b) executed prior to January 1, 2008, in this state under the provisions of Chapter 2,
1066 Part 11, Personal Choice and Living Will Act; [~~and~~]

1067 (2) a health care directive executed under the provisions of this chapter shall be
1068 governed pursuant to the provisions of this chapter that were in effect at that time, unless it
1069 appears from the directive that the declarant intended the current provisions of this chapter to
1070 apply; and

1071 [~~(2)~~] (3) the health care directive described in Subsection (1) is presumed to comply
1072 with the requirements of this chapter.

1073 Section 20. Section **75-2a-122** is amended to read:

1074 **75-2a-122. Effect of act.**

1075 The Advance Health Care Directive Act created in this chapter does not:

- 1076 (1) create a presumption concerning the intention of an [~~individual~~] adult who has not
1077 made or who has revoked an advance health care directive;
- 1078 (2) authorize mercy killing, assisted suicide, or euthanasia; [~~and~~] or
- 1079 (3) authorize the provision, withholding, or withdrawal of health care, to the extent

1080 prohibited by the laws of this state.

1081 Section 21. Section **75-2a-123** is amended to read:

1082 **75-2a-123. Pregnancy.**

1083 (1) A health care directive that provides for the withholding or withdrawal of life
1084 sustaining procedures has no force during the course of a declarant's pregnancy.

1085 (2) Subsection (1) does not negate the appointment of a health care agent during the
1086 course of a declarant's pregnancy.

1087 Section 22. Section **75-2a-124** is amended to read:

1088 **75-2a-124. Provisions cumulative with existing law.**

1089 The provisions of this chapter are cumulative with existing law regarding [~~an~~
1090 ~~individual's~~] a person's right to consent or refuse to consent to medical treatment and do not
1091 impair any existing rights or responsibilities that a health care provider, [~~an individual~~] a
1092 person, including a minor or incapacitated [~~individual~~] person, or [~~an individual's~~] a person's
1093 family or surrogate may have in regard to the provision, withholding or withdrawal of life
1094 sustaining procedures under the common law or statutes of the state.

1095 Section 23. Section **75-2a-125** is enacted to read:

1096 **75-2a-125. Severability.**

1097 If any one or more provision, section, subsection, sentence, clause, phrase, or word of
1098 this chapter, or the application of this chapter to any person or circumstance, is found to be
1099 unconstitutional, the same is hereby declared to be severable and the balance of this chapter
1100 shall remain effective notwithstanding such unconstitutionality. The Legislature hereby
1101 declares that it would have passed this chapter, and each provision, section, subsection,
1102 sentence, clause, phrase, or word of this chapter, irrespective of the fact that any one or more
1103 provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

S.B. 161 2nd Sub. (Salmon) - Advance Health Care Directive Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
