



# UTAH STATE SENATE

UTAH STATE CAPITOL COMPLEX • 320 STATE CAPITOL  
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January 29, 2009

Mr. President:

The Health and Human Services Committee reports a favorable recommendation on **S.B. 117, ADVANCE HEALTH CARE DIRECTIVE ACT AMENDMENTS**, by Senator A. Christensen, with the following amendments:

1. *Page 1, Line 16:*

16           ▶ authorizes a physician assistant {~~;~~} or a psychologist {~~;~~ or a clinical social worker} to

2. *Page 3, Line 77 through Page 6, Line 164:*

77           {~~(7)~~ "Clinical social worker" means a person licensed as a clinical social worker under

78           Title 58, Chapter 60, Mental Health Professional Practice Act.}

79           {+} (7) {+} {~~(8)~~} "Declarant" means an adult who has completed and signed or directed the

80 signing of an advance health care directive.

81           {+} (8) {+} {~~(9)~~} "Default surrogate" means the adult who may make decisions for an individual

82 when either:

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

84           (b) an agent is not able, available, or willing to make decisions for an adult.

85           {+} (9) {+} {~~(10)~~} "Emergency medical services provider" means a

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person who is licensed,

86 designated, or certified under Title 26, Chapter 8a, Utah Emergency Medical Services System  
87 Act.

88 {+} (10) {+} {-(11)} "Generally accepted health care standards":

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

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

92 (ii) enabling health care providers to interpret the statutory form set forth in Section  
93 75-2a-117; and

94 (b) means the standard of care that justifies a provider in declining to provide life  
95 sustaining care because the proposed life sustaining care:

96 (i) will not prevent or reduce the deterioration in the health or functional status of a  
97 person;

98 (ii) will not prevent the impending death of a person; or

99 (iii) will impose more burden on the person than any expected benefit to the person.

100 {+} (11) {+} {-(12)} "Health care" means any care, treatment, service, or procedure to  
improve,  
101 maintain, diagnose, or otherwise affect a person's physical or mental condition.

102 {+} (12) {+} {-(13)} "Health care decision":

103 (a) means a decision about an adult's health care made by, or on behalf of, an adult, that  
104 is communicated to a health care provider;

105 (b) includes:

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

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

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

111 (c) does not include decisions about an adult's financial affairs or social interactions  
112 other than as indirectly affected by the health care decision.

113 {+} (13) {+} {-(14)} "Health care decision making capacity" means an adult's ability to  
make an

114 informed decision about receiving or refusing health care, including:

115 (a) the ability to understand the nature, extent, or probable consequences of health

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116 status and health care alternatives;  
117 (b) the ability to make a rational evaluation of the burdens, risks, benefits, and  
118 alternatives of accepting or rejecting health care; and  
119 (c) the ability to communicate a decision.  
120 {+} (14) {+} {-(15)} "Health care facility" means:  
121 (a) a health care facility as defined in Title 26, Chapter 21, Health Care Facility  
122 Licensing and Inspection Act; and  
123 (b) private offices of physicians, dentists, and other health care providers licensed to  
124 provide health care under Title 58, Occupations and Professions.  
125 {+} (15) {+} {-(16)} "Health care provider" is as defined in Section 78B-3-403, except  
that it  
126 does not include an emergency medical services provider.  
127 {+} (16) {+} {-(17)} (a) "Life sustaining care" means any medical intervention,  
including  
128 procedures, administration of medication, or use of a medical device, that maintains life by  
129 sustaining, restoring, or supplanting a vital function.  
130 (b) "Life sustaining care" does not include care provided for the purpose of keeping a  
131 person comfortable.  
132 {+} (17) {+} {-(18)} "Life with dignity order" means an order, designated by the  
Department of  
133 Health under Section 75-2a-106(5)(a), that gives direction to health care providers, health care  
134 facilities, and emergency medical services providers regarding the specific health care  
135 decisions of the person to whom the order relates.  
136 {+} (18) {+} {-(19)} "Minor" means a person who:  
137 (a) is under 18 years of age; and  
138 (b) is not an emancipated minor.  
139 {+} (19) {+} {-(20)} "Physician" means a physician and surgeon or osteopathic  
surgeon licensed  
140 under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic  
141 Medical Practice Act.  
142 {-(21)} (20) "Physician assistant" means a person licensed as a physician assistant under  
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143 58, Chapter 70a, Physician Assistant Act.

144 ~~{(22)}~~ (21) "Psychologist" means a person licensed as a psychologist under Title 58,  
Chapter

145 61, Psychologist Licensing Act.

146 ~~[(20)]~~ ~~{(23)}~~ (22) "Reasonably available" means:

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

148 (b) willing and able to act in a timely manner considering the urgency of the  
149 circumstances.

150 ~~[(21)]~~ ~~{(24)}~~ (23) "Substituted judgment" means the standard to be applied by a surrogate  
151 when making a health care decision for an adult who previously had the capacity to make  
152 health care decisions, which requires the surrogate to consider:

153 (a) specific preferences expressed by the adult:

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

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

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

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

159 (d) to the extent that the preferences described in Subsections ~~[(21)]~~ (24)(a) through (c)  
160 are unknown, the best interest of the adult.

161 ~~[(22)]~~ ~~{(25)}~~ (24) "Surrogate" means a health care decision maker who is:

162 (a) an appointed agent;

163 (b) a default surrogate under the provisions of Section 75-2a-108; or

164 (c) a guardian.

3. *Page 6, Lines 171 through 181:*

171 (2) To overcome the presumption of capacity, a physician, physician assistant,

172 psychologist, ~~{clinical social worker,}~~ or an APRN who has personally examined  
the adult and

173 assessed the adult's health care decision making capacity must:

174 (a) find that the adult lacks health care decision making capacity;

175 (b) record the finding in the adult's medical chart including an indication of whether

176 the adult is likely to regain health care decision making capacity; and

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- 177 (c) make a reasonable effort to communicate the determination to:  
178 (i) the adult;  
179 (ii) other health care providers or health care facilities that the [~~physician or APRN~~]  
180 person who makes the finding would routinely inform of such a finding; and  
181 (iii) if the adult has a surrogate, any known surrogate.

Respectfully,

D. Chris Buttars  
Committee Chair

Voting: 4-0-2

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