
A BILL FOR AN ACT

RELATING TO HEALTH CARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In 1999, the legislature passed the Uniform
2 Health-Care Decisions Act (1993), which was enacted and codified
3 as chapter 327E, Hawaii Revised Statutes, and in 2004, passed an
4 advance mental health care directives law, which was enacted and
5 codified as chapter 327G, Hawaii Revised Statutes.

6 The legislature finds that these laws should be updated and
7 consolidated into one unified law regarding health care
8 decisions to avoid confusion and conflicting provisions. In
9 2023, the Uniform Law Commission approved and recommended for
10 enactment in all states the Uniform Health-Care Decisions Act
11 (2023). While existing Hawaii law addresses advance directives
12 broadly, the Uniform Health-Care Decisions Act (2023) does so
13 more comprehensively by dividing various types of advance
14 directives into separate sections for power of attorney for
15 health care, health care instructions, and advance mental health
16 care directives.



1 § **-1 Short title.** This chapter may be cited as the
2 Uniform Health Care Decisions Act (modified).

3 § **-2 Definitions.** As used in this chapter, unless the
4 context clearly requires otherwise:

5 "Advance health care directive" means a power of attorney
6 for health care, health care instruction, or both. "Advance
7 health care directive" includes an advance mental health care
8 directive.

9 "Advance mental health care directive" means a power of
10 attorney for health care, health care instruction, or both,
11 created under section -9.

12 "Advanced practice registered nurse" means a registered
13 nurse licensed to practice in this State who:

14 (1) Has met the qualifications set forth in chapter 457;

15 (2) Because of advanced education and specialized clinical
16 training, is authorized to assess, screen, diagnose,
17 order, utilize, or perform medical, therapeutic,
18 preventive, or corrective measures; and

19 (3) Holds an accredited national certification in an
20 advanced practice registered nurse psychiatric mental-
21 health specialization.



1 "Agent" means an individual appointed under a power of
2 attorney for health care to make a health care decision for the
3 individual who made the appointment. "Agent" includes a co-
4 agent or alternate agent appointed under section -20.

5 "Capacity" means having capacity under section -3.

6 "Civil union partner" means an individual who is party to a
7 civil union established pursuant to chapter 572B.

8 "Cohabitant" means each of two individuals who have been
9 living together as a couple for at least one year after each
10 became an adult or was emancipated, and who are not married to
11 each other or are not in a civil union with each other.

12 "Default surrogate" means an individual authorized under
13 section -12 to make a health care decision for another
14 individual.

15 "Electronic" means relating to technology having
16 electrical, digital, magnetic, wireless, optical,
17 electromagnetic, or similar capabilities.

18 "Emancipated minor" means a minor deemed to be emancipated
19 pursuant to section 577-25 or order of the family court.

20 "Emergency medical services personnel" has the same meaning
21 as in section 321-222.



1 "Family member" means a spouse, civil union partner, adult
2 child, parent, or grandparent, or an adult child of a spouse,
3 civil union partner, child, parent, or grandparent.

4 "First responder personnel" has the same meaning as in
5 section 321-222.

6 "Guardian" means a person appointed under chapter 560,
7 article v, part 3, by a court to make decisions regarding the
8 personal affairs of an individual, which may include health care
9 decisions. "Guardian" does not include a guardian ad litem.

10 "Health care" means care or treatment or a service or
11 procedure to maintain, monitor, diagnose, or otherwise affect an
12 individual's physical or mental illness, injury, or condition.

13 "Health care" includes mental health care.

14 "Health care decision" means a decision made by an
15 individual or the individual's surrogate regarding the
16 individual's health care, including:

17 (1) Selection or discharge of a health care professional
18 or health care institution;

19 (2) Approval or disapproval of a diagnostic test, surgical
20 procedure, medication, therapeutic intervention, or
21 other health care; and



1 (3) Direction to provide, withhold, or withdraw artificial
2 nutrition or hydration, mechanical ventilation, or
3 other health care.

4 "Health care institution" means a facility or agency
5 licensed, certified, or otherwise authorized or permitted by
6 other law to provide health care in this State in the ordinary
7 course of business.

8 "Health care instruction" means a direction, whether or not
9 in a record, made by an individual that indicates the
10 individual's goals, preferences, or wishes concerning the
11 provision, withholding, or withdrawal of health care. "Health
12 care instruction" includes a direction intended to be effective
13 if a specified condition arises.

14 "Health care professional" means a physician or other
15 individual licensed, certified, or otherwise authorized or
16 permitted by other law of this State to provide health care in
17 this State in the ordinary course of business or the practice of
18 the physician's or individual's profession.

19 "Individual" means an adult or emancipated minor.

20 "Mental health care" means care or treatment or a service
21 or procedure to maintain, monitor, diagnose, or otherwise affect



1 an individual's mental illness or other psychiatric,
2 psychological, or psychosocial condition.

3 "Minor" means a person less than eighteen years of age.

4 "Nursing home" means a nursing facility as defined in
5 section 1919(a)(1) of the Social Security Act, (42 U.S.C.
6 1396r(a)(1)), or skilled nursing facility as defined in section
7 1819(a)(1) of the Social Security Act, (42 U.S.C. 1395i-
8 3(a)(1)).

9 "Person" means an individual, estate, business or nonprofit
10 entity, government or governmental subdivision, agency, or
11 instrumentality, or other legal entity.

12 "Person interested in the welfare of the individual" means:

- 13 (1) The individual's surrogate;
14 (2) A family member of the individual;
15 (3) The cohabitant of the individual;
16 (4) A public entity providing health care case management
17 or protective services to the individual;
18 (5) A person appointed under any other law to make
19 decisions for the individual under a power of attorney
20 for finances; or



1 (6) A person that has an ongoing personal or professional
2 relationship with the individual, including a person
3 that has provided educational or health care services
4 or supported decision making to the individual.

5 "Physician" means an individual licensed to practice
6 medicine or osteopathy under chapter 453.

7 "Psychologist" means an individual licensed to practice
8 psychology under chapter 465.

9 "Power of attorney for health care" means a record in which
10 an individual appoints an agent to make health care decisions
11 for the individual.

12 "Reasonably available" means being able to be contacted
13 without undue effort and being willing and able to act in a
14 timely manner considering the urgency of an individual's health
15 care situation. When used to refer to an agent or default
16 surrogate, "reasonably available" includes being willing and
17 able to comply with the duties under section -17 in a timely
18 manner considering the urgency of an individual's health care
19 situation.

20 "Record" means information:

21 (1) Inscribed on a tangible medium; or



1 (2) Stored in an electronic or other medium and
2 retrievable in perceivable form.

3 "Responsible health care professional" means:

4 (1) A health care professional designated by an individual
5 or the individual's surrogate to have primary
6 responsibility for the individual's health care or for
7 overseeing a course of treatment; or

8 (2) In the absence of a designation under paragraph (1)
9 or, if the professional designated under paragraph (1)
10 is not reasonably available, a health care
11 professional who has primary responsibility for
12 overseeing the individual's health care or for
13 overseeing a course of treatment.

14 "Sign" means, with present intent to authenticate or adopt
15 a record:

16 (1) Execute or adopt a tangible symbol; or

17 (2) Attach to or logically associate with the record an
18 electronic symbol, sound, or process.

19 "State" means a state of the United States, the District of
20 Columbia, Puerto Rico, the United States Virgin Islands, or any
21 other territory or possession subject to the jurisdiction of the



1 United States. "State" includes a federally recognized Indian
2 tribe.

3 "Supported decision making" means assistance, from one or
4 more persons of an individual's choosing, that helps the
5 individual make or communicate a decision, including by helping
6 the individual understand the nature and consequences of the
7 decision.

8 "Surrogate" means:

- 9 (1) An agent;
- 10 (2) A default surrogate; or
- 11 (3) A guardian authorized to make health care decisions.

12 § -3 **Capacity.** (a) An individual shall be deemed to
13 have capacity for the purpose of this chapter if the individual:

- 14 (1) Is willing and able to communicate a decision
15 independently or with appropriate services,
16 technological assistance, supported decision making,
17 or other reasonable accommodation; and
- 18 (2) In making or revoking:
 - 19 (A) A health care decision, understands the nature
20 and consequences of the decision, including the
21 primary risks and benefits of the decision;



1 (B) A health care instruction, understands the nature
 2 and consequences of the instruction, including
 3 the primary risks and benefits of the choices
 4 expressed in the instruction; and

5 (C) An appointment of an agent under a health care
 6 power of attorney or identification of a default
 7 surrogate under section -12(b), recognizes the
 8 identity of the person being appointed or
 9 identified and understands the general nature of
 10 the relationship of the individual making the
 11 appointment or identification with the person
 12 being appointed or identified.

13 (b) The right of an individual who has capacity to make a
 14 decision about the individual's health care shall not be
 15 affected by the creation or revocation of an advance health care
 16 directive by the individual.

17 **§ -4 Presumption of capacity; overcoming presumption.**

18 (a) An individual shall be presumed to have capacity to make or
 19 revoke a health care decision, health care instruction, and
 20 power of attorney for health care unless:



- 1 (1) A court has found the individual lacks capacity to do
2 so; or
- 3 (2) The presumption is rebutted under subsection (b).
- 4 (b) Subject to sections -5 and -6, a presumption
5 under subsection (a) may be rebutted by a finding that the
6 individual lacks capacity:
- 7 (1) Subject to subsection (c), made on the basis of a
8 contemporaneous examination by any of the following
9 health care professionals:
- 10 (A) A physician;
- 11 (B) A psychologist; or
- 12 (C) An advanced practice registered nurse;
- 13 (2) Made in accordance with accepted standards of the
14 profession and the scope of practice of the health
15 care professional making the finding and to a
16 reasonable degree of certainty; and
- 17 (3) Documented in a record signed by the health care
18 professional making the finding that includes an
19 opinion of the cause, nature, extent, and probable
20 duration of the lack of capacity.
- 21 (c) The finding under subsection (b) shall not be made by:



1 (1) A family member of the individual presumed to have
2 capacity;

3 (2) The cohabitant of the individual or a family member of
4 the cohabitant; or

5 (3) The individual's surrogate or a family member of the
6 surrogate.

7 (d) If the finding under subsection (b) was based on a
8 condition the individual no longer has or a responsible health
9 care professional subsequently has good cause to believe the
10 individual has capacity, the individual shall be presumed to
11 have capacity unless a court finds the individual lacks capacity
12 pursuant to section -6 or the presumption is rebutted under
13 subsection (b).

14 § -5 Notice of finding of lack of capacity; right to

15 object. (a) As soon as reasonably feasible, a health care
16 professional who makes a finding under section -4(b) shall
17 inform the individual who is the subject of the finding or the
18 individual's responsible health care professional of the
19 finding.

20 (b) As soon as reasonably feasible, a responsible health
21 care professional who is informed of a finding under



1 section -4(b) shall inform the individual who is the subject
2 of the finding and the individual's surrogate.

3 (c) An individual found under section -4(b) to lack
4 capacity may object to the finding:

5 (1) By orally informing a responsible health care
6 professional;

7 (2) In a record provided to a responsible health care
8 professional or the health care institution in which
9 the individual resides or is receiving care; or

10 (3) By another act that clearly indicates the individual's
11 objection.

12 (d) If the individual objects under subsection (c), the
13 individual shall be treated as having capacity unless:

14 (1) The individual withdraws the objection;

15 (2) A court finds the individual lacks the presumed
16 capacity;

17 (3) The individual is experiencing a health condition
18 requiring a decision regarding health care treatment
19 to be made promptly to avoid imminent loss of life or
20 serious harm to the health of the individual; or



- 1 (4) Subject to subsection (e), the finding is confirmed by
2 a second finding made by a health care professional
3 authorized under section -4(b)(1) who:
- 4 (A) Did not make the first finding;
- 5 (B) Is not a family member of the health care
6 professional who made the first finding; and
- 7 (C) Is not the cohabitant of the health care
8 professional who made the first finding or a
9 family member of the cohabitant.
- 10 (e) A second finding that the individual lacks capacity
11 under subsection (d)(4) shall not be sufficient to rebut the
12 presumption of capacity if the individual is requesting the
13 provision or continuation of life-sustaining treatment and the
14 finding is being used to make a decision to withhold or withdraw
15 the treatment.
- 16 (f) As soon as reasonably feasible, a health care
17 professional who is informed of an objection under subsection
18 (c) shall:
- 19 (1) Communicate the objection to a responsible health care
20 professional; and



1 (2) Document the objection and the date of the objection
2 in the individual's medical record or communicate the
3 objection and the date of the objection to an
4 administrator with responsibility for medical records
5 of the health care institution providing health care
6 to the individual, who shall document the objection
7 and the date of the objection in the individual's
8 medical record.

9 § -6 **Judicial review of finding of lack of capacity.**

10 (a) An individual found under section -4(b) to lack
11 capacity, a responsible health care professional, the health
12 care institution providing health care to the individual, or a
13 person interested in the welfare of the individual may petition
14 the family court in the county where the individual resides or
15 is located to determine whether the individual lacks capacity.

16 (b) The court in which a petition under subsection (a) is
17 filed may appoint a guardian ad litem. The court shall hear the
18 petition as soon as practicable after the petition is filed. As
19 soon as practicable after the hearing, the court shall determine
20 whether the individual lacks capacity. The court may determine
21 that the individual lacks capacity only if the court finds by



1 clear and convincing evidence that the individual lacks
2 capacity.

3 § -7 **Health care instruction.** (a) An individual may
4 create a health care instruction that expresses the individual's
5 preferences for future health care, including preferences
6 regarding:

- 7 (1) Health care professionals or health care institutions;
- 8 (2) How a health care decision will be made and
9 communicated;
- 10 (3) Persons that should or should not be consulted
11 regarding a health care decision;
- 12 (4) A person to serve as guardian for the individual if
13 one is appointed; and
- 14 (5) An individual to serve as a default surrogate.

15 (b) A health care professional to whom an individual
16 communicates or provides an instruction under subsection (a)
17 shall document and maintain the instruction and the date of the
18 instruction in the individual's medical record or communicate
19 the instruction and date of the instruction to an administrator
20 with responsibility for medical records of the health care
21 institution providing health care to the individual, who shall



1 document and maintain the instruction and the date of the
2 instruction in the individual's medical record.

3 (c) A health care instruction made by an individual that
4 conflicts with an earlier health care instruction made by the
5 individual, including an instruction documented in a medical
6 order, shall revoke the earlier instruction to the extent of the
7 conflict.

8 (d) A health care instruction may be in the same record as
9 a power of attorney for health care.

10 § -8 **Power of attorney for health care.** (a) An
11 individual may create a power of attorney for health care to
12 appoint an agent to make health care decisions for the
13 individual.

14 (b) A person shall be disqualified from acting as an agent
15 for an individual who is found under section -4(b) or by a
16 court to lack capacity to make health care decisions if:

17 (1) A court finds that the potential agent poses a danger
18 to the individual's well-being, even if the court does
19 not issue a restraining order or injunction against
20 the potential agent; or



1 (2) The potential agent is an owner, operator, employee,
2 or contractor of a nursing home, or other residential
3 care facility in which the individual resides or is
4 receiving care, unless the owner, operator, employee,
5 or contractor is a family member of the individual,
6 the cohabitant of the individual, or a family member
7 of the cohabitant.

8 (c) A health care decision made by an agent shall be
9 effective without judicial approval.

10 (d) A power of attorney for health care shall be in a
11 record, signed by the individual creating the power, and signed
12 by an adult witness who:

13 (1) Reasonably believes the act of the individual to
14 create the power of attorney is voluntary and knowing;

15 (2) Is not:

16 (A) The agent appointed by the individual;

17 (B) The agent's spouse, civil union partner, or
18 cohabitant; or

19 (C) If the individual resides or is receiving care in
20 a nursing home or other residential care
21 facility, the owner, operator, employee, or



1 contractor of the nursing home or other
2 residential care facility; and
3 (3) Is present when the individual signs the power of
4 attorney or when the individual represents that the
5 power of attorney reflects the individual's wishes.
6 (e) A witness under subsection (d) shall be considered
7 present if the witness and the individual are:
8 (1) Physically present in the same location;
9 (2) Using electronic means that allow for real time audio
10 and visual transmission and communication in real time
11 to the same extent as if the witness and the
12 individual were physically present in the same
13 location; or
14 (3) Able to speak to and hear each other in real time
15 through audio connection if:
16 (A) The identity of the individual is personally
17 known to the witness; or
18 (B) The witness is able to authenticate the identity
19 of the individual by receiving accurate answers
20 from the individual that enable the
21 authentication.



1 (f) A power of attorney for health care may include a
2 health care instruction.

3 § -9 **Advance mental health care directive.** (a) An
4 individual may create an advance health care directive that
5 addresses only mental health care for the individual. The
6 directive may include a health care instruction, a power of
7 attorney for health care, or both.

8 (b) A health care instruction under this section may
9 include the individual's:

10 (1) General philosophy and objectives regarding mental
11 health care;

12 (2) Specific goals, preferences, and wishes regarding the
13 provision, withholding, or withdrawal of a form of
14 mental health care, including:

15 (A) Preferences regarding professionals, programs,
16 and facilities;

17 (B) Admission to a mental health care facility,
18 including duration of admission;

19 (C) Preferences regarding medications;

20 (D) Refusal to accept a specific type of mental
21 health care, including medication; and



1 (E) Preferences regarding crisis intervention.

2 (c) A power of attorney for health care under this section
3 may appoint an agent to make decisions only for mental health
4 care.

5 (d) An individual may direct in an advance mental health
6 care directive that, if the individual is experiencing a
7 psychiatric or psychological event specified in the directive,
8 the individual may not revoke the directive or a part of the
9 directive.

10 (e) If an advance mental health care directive includes a
11 direction under subsection (d), the advance mental health care
12 shall be signed by the individual creating the advance mental
13 health care directive and at least two adult witnesses who:

14 (1) Attest that to the best of their knowledge the
15 individual:

16 (A) Understood the nature and consequences of the
17 direction, including its risks and benefits; and

18 (B) Made the direction voluntarily and without
19 coercion or undue influence;

20 (2) Are not:

21 (A) The agent appointed by the individual;



- 1 (B) The agent's spouse, civil union partner, or
2 cohabitant; and
- 3 (C) If the individual resides in a nursing home or
4 other residential care facility the owner,
5 operator, employee, or contractor of the nursing
6 home or other residential care facility; and
- 7 (3) Are physically present in the same location as the
8 individual.

9 § -10 **Relationship of advance mental health care**
10 **directive and other advance health care directive.** (a) If a
11 direction in an advance mental health care directive of an
12 individual conflicts with a direction in another advance health
13 care directive of the individual, the later direction shall
14 revoke the earlier direction to the extent of the conflict.

15 (b) An appointment of an agent to make decisions only for
16 mental health care for an individual shall not revoke an earlier
17 appointment of an agent to make other health care decisions for
18 the individual.

19 (c) An appointment of an agent to make decisions only for
20 mental health care decisions for an individual shall revoke an
21 earlier appointment of an agent to make mental health care



1 decisions for the individual unless otherwise specified in the
2 later appointment.

3 (d) An appointment of an agent to make health care
4 decisions for an individual other than decisions about mental
5 health care shall not revoke a prior appointment of an agent to
6 make only mental health care decisions.

7 § -11 **Model forms.** The department of health, in
8 consultation with the department of the attorney general, shall
9 develop, publish, and update as appropriate model forms of
10 advance health care directives and advance mental health care
11 directives, which shall be posted on the department of health's
12 website.

13 § -12 **Default surrogate.** (a) A default surrogate may
14 make a health care decision for an individual who lacks capacity
15 to make health care decisions and for whom an agent, or guardian
16 authorized to make health care decisions, has not been appointed
17 or is not reasonably available.

18 (b) Upon determination that an individual lacks capacity
19 to make health care decisions, a responsible health care
20 professional or the responsible health care professional's
21 designee shall make reasonable efforts to notify the individual



1 of the individual's lack of capacity to make health care
2 decisions. If the individual has not appointed an agent and the
3 individual retains capacity under section -3(a)(1) and
4 (2)(C), the individual may identify a person to act as a default
5 surrogate.

6 (c) Unless the individual has an advance health care
7 directive that indicates otherwise or the person identified by
8 the individual under subsection (b) is designated as a default
9 surrogate, the responsible health care professional or the
10 responsible health care professional's designee shall make
11 reasonable efforts to locate as many interested persons as
12 practicable, and the responsible health care professional or the
13 responsible health care professional's designee may rely on the
14 interested persons to notify other family members or interested
15 persons. Upon locating interested persons, the responsible
16 health care professional or the responsible health care
17 professional's designee shall inform the interested persons of
18 the individual's lack of capacity and that a default surrogate
19 should be selected for the individual.

20 (d) Interested persons shall make reasonable efforts to
21 reach a consensus as to who among them shall act as the



1 individual's default surrogate. If the person selected to act
2 as the individual's default surrogate is disqualified or becomes
3 disqualified under section -13, the interested persons shall
4 make reasonable efforts to reach consensus as to who among them
5 shall act as the individual's default surrogate.

6 The person selected to act as the individual's default
7 surrogate shall be the person who has a close relationship with
8 the individual and who is the most likely to be currently
9 informed of the individual's wishes regarding health care
10 decisions.

11 (e) If any of the interested persons disagrees with the
12 selection of the default surrogate or the health care decision
13 by the default surrogate, or, if after reasonable efforts the
14 interested persons are unable to reach a consensus as to who
15 should act as the default surrogate, any of the interested
16 persons may seek guardianship of the individual by initiating
17 guardianship proceedings pursuant to chapter 551 or chapter 560,
18 as applicable. Only interested persons involved in the
19 discussions to choose a default surrogate may initiate such
20 proceedings with regard to the individual.



1 (f) A responsible health care professional may require a
2 person who assumes authority to act as a default surrogate to
3 provide a signed declaration in a record under penalty of law
4 stating facts and circumstances reasonably sufficient to
5 establish the authority. The signed declaration shall include
6 the following:

- 7 (1) The name of the person who seeks to assume the
8 authority to act as a default surrogate;
- 9 (2) An affirmation that the person understands that the
10 statements and affirmations are made under the penalty
11 of law;
- 12 (3) An affirmation that the person had a relationship with
13 the individual who lacks capacity prior to the
14 individual becoming incapacitated;
- 15 (4) A statement defining that relationship, including
16 identifying the relationship of the person to the
17 individual;
- 18 (5) If the person is not a family member or cohabitant, a
19 statement describing how the person exhibited special
20 care and concern for the individual who lacks capacity



1 and is familiar with the individual's personal values;
2 and

3 (6) Affirmation that the person understands that the
4 health care professional will reasonably rely on the
5 person's representations in the declaration to assist
6 in providing medical treatment.

7 (g) If a responsible health care professional reasonably
8 determines that a person who assumed authority to act as a
9 default surrogate is not willing or able to comply with a duty
10 under section -17 or fails to comply with the duty in a
11 timely manner, the professional may request interested persons
12 to choose another default surrogate.

13 (h) A health care decision made by a default surrogate
14 shall be effective without judicial approval.

15 (i) As used in this section, unless the context clearly
16 requires otherwise, "interested persons" means any of the
17 individual's family members or any adult who has exhibited
18 special care and concern for the individual and who is familiar
19 with the individual's personal values.

20 § -13 **Disqualification to act as default surrogate.** (a)
21 An individual for whom a health care decision would be made may



1 disqualify a person from acting as default surrogate for the
2 individual by expressing the wish to disqualify that person.
3 The disqualification shall be in a record signed by the
4 individual or communicated verbally or nonverbally by the
5 individual to the person being disqualified, another person, or
6 a responsible health care professional. If the individual has
7 expressed that the individual did not want a particular person
8 to make health care decisions for the individual, that person
9 shall be disqualified from being a default surrogate.

10 Disqualification under this subsection shall be effective even
11 if made by an individual who is found under section -4(b) or
12 by a court to lack capacity to make a health care decision if
13 the individual clearly communicates a desire that the person
14 being disqualified not make health care decisions for the
15 individual.

16 (b) A person shall be disqualified from acting as a
17 default surrogate for an individual who lacks capacity to make
18 health care decisions if:

19 (1) A court finds that the potential default surrogate
20 poses a danger to the individual's well-being, even if



- 1 the court does not issue a restraining order or
2 injunction against the potential default surrogate;
- 3 (2) The potential default surrogate is an owner, operator,
4 employee, or contractor of a nursing home or other
5 residential care facility in which the individual is
6 residing or receiving care unless the owner, operator,
7 employee, or contractor is a family member of the
8 individual, the cohabitant of the individual, or a
9 family member of the cohabitant;
- 10 (3) The potential default surrogate refuses to provide a
11 timely declaration under section -12(f) upon the
12 request by a responsible health care professional; or
- 13 (4) The potential default surrogate is the individual's
14 spouse or civil union partner, and:
- 15 (A) A petition for annulment, divorce, or dissolution
16 of marriage, legal separation, or termination has
17 been filed and not dismissed or withdrawn;
- 18 (B) A decree of annulment, divorce, or dissolution of
19 marriage, legal separation, or termination has
20 been issued, the individual and the spouse or



1 civil union partner have agreed in a record to a
2 legal separation; or

3 (C) The spouse or civil union partner has abandoned
4 or deserted the individual for more than one
5 year.

6 (c) Notwithstanding subsection (b)(4), a spouse or civil
7 union partner shall not be disqualified if the individual has
8 retained capacity under section -3(a)(1) and (2)(C) and
9 expresses the wish not to disqualify the spouse or civil union
10 partner as a default surrogate.

11 § -14 **Revocation.** (a) An individual may revoke the
12 appointment of an agent, the designation of a default surrogate,
13 or a health care instruction in whole or in part, unless:

14 (1) A court finds the individual lacks capacity to do so;

15 (2) The individual is found under section -4(b) to lack
16 capacity to do so and, if the individual objects to
17 the finding, the finding is confirmed under
18 section -5(d)(4); or

19 (3) The individual created an advance mental health care
20 directive that includes the provision under
21 section -9(d) and the individual is experiencing



1 the psychiatric or psychological event specified in
2 the directive.

3 (b) Revocation under subsection (a) may be by any act of
4 the individual that clearly indicates that the individual
5 revokes the appointment, designation, or instruction, including
6 an oral statement to a health care professional.

7 (c) Except as provided in section -10, an advance
8 health care directive of an individual that conflicts with
9 another advance health care directive of the individual shall
10 revoke the earlier directive to the extent of the conflict.

11 (d) Unless otherwise provided in an individual's advance
12 health care directive appointing an agent, the appointment of a
13 spouse or civil union partner of an individual as agent for the
14 individual shall be revoked if:

15 (1) A petition for annulment, divorce, legal separation,
16 or termination has been filed and not dismissed or
17 withdrawn;

18 (2) A decree of annulment, divorce, legal separation, or
19 termination has been issued;

20 (3) The individual and the spouse or civil union partner
21 have agreed in a record to a legal separation; or



1 (4) The spouse or civil union partner has abandoned or
2 deserted the individual for more than one year.

3 § -15 **Withdrawal of agent.** An agent may withdraw by
4 giving notice to the individual for whom the agent is acting, if
5 the individual has capacity at the time. If the individual is
6 found under section -4(b) or by a court to lack capacity, the
7 agent may withdraw by giving notice to a responsible health care
8 professional.

9 § -16 **Validity of advance health care directive;**
10 **conflict with other law.** (a) An advance health care directive
11 created outside this State shall be valid if it complies with:

12 (1) The law of the state specified in the directive or, if
13 a state is not specified, the state in which the
14 individual created the directive; or

15 (2) This chapter.

16 (b) A person may assume without inquiry that an advance
17 health care directive is genuine, valid, and still in effect,
18 and may implement and rely on it, unless the person has good
19 cause to believe the directive is invalid or has been revoked.

20 (c) An advance health care directive, revocation of a
21 directive, or a signature on a directive or revocation shall not



1 be denied legal effect or enforceability solely because it is in
2 electronic form.

3 (d) Evidence relating to an advance health care directive,
4 revocation of a directive, or a signature on a directive or
5 revocation shall not be excluded in a proceeding solely because
6 the evidence is in electronic form.

7 (e) This chapter shall not affect the validity of an
8 electronic record or signature that is valid under chapter 489E.

9 (f) If this chapter conflicts with other laws of this
10 State relating to the creation, execution, implementation, or
11 revocation of an advance health care directive, this chapter
12 shall prevail.

13 **§ -17 Duties of agent and default surrogate.** (a) An
14 agent or default surrogate shall have a fiduciary duty to the
15 individual for whom the agent or default surrogate is acting
16 when exercising or purporting to exercise a power under
17 section -18.

18 (b) An agent or default surrogate shall make a health care
19 decision in accordance with the direction of the individual in
20 an advance health care directive and other goals, preferences,



1 and wishes of the individual to the extent known or reasonably
2 ascertainable by the agent or default surrogate.

3 (c) If there is not a direction in an advance health care
4 directive and the goals, preferences, and wishes of the
5 individual regarding a health care decision are not known or
6 reasonably ascertainable by the agent or default surrogate, the
7 agent or default surrogate shall make the decision in accordance
8 with the agent's or default surrogate's determination of the
9 individual's best interest.

10 (d) In determining the individual's best interest under
11 subsection (c), the agent or default surrogate shall:

12 (1) Give primary consideration to the individual's
13 contemporaneous communications, including verbal and
14 nonverbal expressions;

15 (2) Consider the individual's values to the extent known
16 or reasonably ascertainable by the agent or default
17 surrogate; and

18 (3) Consider the risks and benefits of the potential
19 health care decision.

20 (e) As soon as reasonably feasible, an agent or default
21 surrogate who is informed of a revocation of an advance health



1 care directive or disqualification of the agent or default
2 surrogate shall communicate the revocation or disqualification
3 to a responsible health care professional.

4 § -18 Powers of agent and default surrogate. (a)

5 Except as provided in subsection (c), the power of an agent or
6 default surrogate shall commence when the individual is found
7 under section -4(b) or by a court to lack capacity to make a
8 health care decision. The power shall cease if the individual
9 later is found to have capacity to make a health care decision,
10 or the individual objects under section -5(c) to the finding
11 of lack of capacity under section -4(b). The power shall
12 resume if:

- 13 (1) The power ceased because the individual objected under
- 14 section -5(c); and
- 15 (2) The finding of lack of capacity is confirmed under
- 16 section -5(d)(4) or a court finds that the
- 17 individual lacks capacity to make a health care
- 18 decision.

19 (b) An agent or default surrogate may request, receive,
20 examine, copy, and consent to the disclosure of medical and
21 other health care information about the individual if the



1 individual would have the right to request, receive, examine,
2 copy, or consent to the disclosure of the information.

3 (c) A power of attorney for health care may provide that
4 the power of an agent under subsection (b) commences on
5 appointment.

6 (d) If no other person is authorized to do so, an agent or
7 default surrogate may apply for private health insurance and
8 benefits on behalf of the individual. An agent or default
9 surrogate who may apply for insurance and benefits shall not,
10 solely by reason of the power, have a duty to apply for the
11 insurance or benefits.

12 A default surrogate may act as a medicaid authorized
13 representative, pursuant to federal and state medicaid laws
14 relating to authorized representatives, on the individual's
15 behalf for the purposes of medicaid, including assisting with,
16 submitting, and executing a medicaid application,
17 redetermination of eligibility, or other ongoing medicaid-
18 related communications with the department of human services.
19 For the purposes of medicaid, the default surrogate may access
20 medicaid records of the individual on whose behalf the default
21 surrogate is designated to act. For a default surrogate to be



1 able to act under this subsection, the default surrogate shall
2 agree to be legally bound by the federal and state authorities
3 related to authorized representatives, including maintaining the
4 confidentiality of any information provided by the department of
5 human services, in compliance with all federal and state
6 confidentiality laws.

7 The agent's or default surrogate's status as an authorized
8 representative for the purposes of medicaid shall terminate when
9 revoked by an individual who no longer lacks capacity, upon
10 appointment or availability of another agent or guardian, or
11 upon the individual's death.

12 (e) An agent or default surrogate shall not consent to
13 voluntary admission of the individual to a facility for mental
14 health treatment unless:

15 (1) Voluntary admission is specifically authorized by the
16 individual in an advance health care directive in a
17 record; and

18 (2) The admission is for no more than the maximum of the
19 number of days specified in the directive or thirty
20 days, whichever is less.



1 (f) An agent or default surrogate may consent to placement
2 of the individual in a nursing home without specific
3 authorization by the individual; provided that if the placement
4 is intended to be for more than one hundred days an agent or
5 default surrogate shall not consent to placement of the
6 individual in a nursing home if:

7 (1) An alternative living arrangement is reasonably
8 feasible;

9 (2) The individual objects to the placement; or

10 (3) The individual is not terminally ill.

11 Nothing in this subsection shall prevent an agent or
12 default surrogate from consenting to placement of the individual
13 in a nursing home for more than one hundred days if the
14 individual specifically authorizes the agent or default
15 surrogate to do so in an advance health care directive in a
16 record.

17 § -19 **Limitation on powers.** (a) If an individual has a
18 long-term disability requiring routine treatment by artificial
19 nutrition, hydration, or mechanical ventilation and a history of
20 using the treatment without objection, an agent or default



1 surrogate shall not consent to withhold or withdraw the
2 treatment unless:

3 (1) The treatment is not necessary to sustain the
4 individual's life or maintain the individual's well-
5 being;

6 (2) The individual has expressly authorized the
7 withholding or withdrawal in a health care instruction
8 that has not been revoked; or

9 (3) The individual has experienced a major reduction in
10 health or functional ability from which the individual
11 is not expected to recover, even with other
12 appropriate treatment, and the individual has not:

13 (A) Given a direction inconsistent with withholding
14 or withdrawal; or

15 (B) Communicated by verbal or nonverbal expression a
16 desire for artificial nutrition, hydration, or
17 mechanical ventilation.

18 (b) A default surrogate shall not make a health care
19 decision if, under other laws of this State, the decision:

20 (1) May not be made by a guardian; or



1 (2) May be made by a guardian only if the court appointing
2 the guardian specifically authorizes the guardian to
3 make the decision.

4 § -20 **Co-agents; alternate agent.** (a) An individual
5 may appoint multiple individuals as co-agents in a power of
6 attorney for health care. Unless the power of attorney provides
7 otherwise, each co-agent may exercise independent authority.

8 (b) An individual in a power of attorney for health care
9 may appoint one or more individuals to act as alternate agents
10 if a predecessor agent withdraws, dies, becomes disqualified, is
11 not reasonably available, or otherwise is unwilling or unable to
12 act as agent.

13 (c) Unless the power of attorney provides otherwise, an
14 alternate agent shall have the same authority as the original
15 agent:

16 (1) At any time the original agent is not reasonably
17 available or is otherwise unwilling or unable to act,
18 for the duration of the unavailability, unwillingness,
19 or inability to act; or



1 (2) If the original agent and all other predecessor agents
2 have withdrawn, died, or are disqualified from acting
3 as agent.

4 § -21 Duties of health care professional, responsible
5 health care professional, and health care institution. (a) A
6 responsible health care professional who is aware that an
7 individual has been found under section -4(b) or by a court
8 to lack capacity to make a health care decision shall make a
9 reasonable effort to determine if the individual has a
10 surrogate.

11 (b) If possible before implementing a health care decision
12 made by a surrogate, a responsible health care professional as
13 soon as reasonably feasible shall communicate to the individual
14 the decision made and the identity of the surrogate.

15 (c) A responsible health care professional who makes or is
16 informed of a finding that an individual lacks capacity to make
17 a health care decision or no longer lacks capacity, or that
18 other circumstances exist that affect a health care instruction
19 or the authority of a surrogate shall, as soon as reasonably
20 feasible:



- 1 (1) Document the finding or circumstance in the
- 2 individual's medical record; and
- 3 (2) If possible, communicate to the individual and the
- 4 individual's surrogate the finding or circumstance and
- 5 that the individual may object under section -5(c)
- 6 to the finding under section -4(b).
- 7 (d) A responsible health care professional who is informed
- 8 that an individual has created or revoked an advance health care
- 9 directive, or that a surrogate for an individual has been
- 10 appointed, designated, or disqualified, or has withdrawn, shall:
- 11 (1) Document the information as soon as reasonably
- 12 feasible in the individual's medical record; and
- 13 (2) If evidence of the directive, revocation, appointment,
- 14 designation, disqualification, or withdrawal is in a
- 15 record, request a copy and, on receipt, cause the copy
- 16 to be included in the individual's medical record.
- 17 (e) Except as provided in subsections (f) and (g), a
- 18 health care professional or health care institution providing
- 19 health care to an individual shall comply with:
- 20 (1) A health care instruction given by the individual
- 21 regarding the individual's health care;



- 1 (2) A reasonable interpretation by the individual's
2 surrogate of an instruction given by the individual;
3 and
4 (3) A health care decision for the individual made by the
5 individual's default surrogate in accordance with
6 sections -17 and -18 to the same extent as if
7 the decision had been made by the individual at a time
8 when the individual had capacity.
9 (f) A health care professional or a health care
10 institution may refuse to provide health care consistent with a
11 health care instruction or health care decision if:
12 (1) The instruction or decision is contrary to a policy of
13 the health care institution providing care to the
14 individual and the policy was timely communicated to
15 the individual with capacity or to the individual's
16 surrogate;
17 (2) The care would require health care that is not
18 available to the health care professional or health
19 care institution; or
20 (3) Compliance with the instruction or decision would:



1 (A) Require the health care professional to provide
2 care that is contrary to the health care
3 professional's religious belief or moral
4 conviction and if other law permits the health
5 care professional to refuse to provide care for
6 that reason;

7 (B) Require the health care professional or health
8 care institution to provide care that is contrary
9 to generally accepted health care standards
10 applicable to the health care professional or
11 health care institution; or

12 (C) Violate a court order or other law.

13 (g) A health care professional or health care institution
14 that refuses to provide care under subsection (f) shall:

15 (1) As soon as reasonably feasible, inform the individual,
16 if possible, and the individual's surrogate of the
17 refusal; and

18 (2) Immediately make a reasonable effort to transfer the
19 individual to another health care professional or
20 health care institution that is willing to comply with
21 the instruction or decision and provide life-



1 sustaining care and care needed to keep or make the
2 individual comfortable, consistent with accepted
3 medical standards to the extent feasible, until a
4 transfer is made.

5 **§ -22 Decision by guardian.** (a) A guardian may refuse
6 to comply with or revoke the individual's advance health care
7 directive only if the court appointing the guardian expressly
8 orders the noncompliance or revocation.

9 (b) Unless a court orders otherwise, a health care
10 decision made by an agent appointed by an individual subject to
11 guardianship prevails over a decision of the guardian appointed
12 for the individual.

13 **§ -23 Immunity.** (a) A health care professional or
14 health care institution acting in good faith shall not be
15 subject to civil or criminal liability or to discipline for
16 unprofessional conduct for:

17 (1) Complying with a health care decision made for an
18 individual by another person if compliance is based on
19 a reasonable belief that the person has authority to
20 make the decision, including a decision to withhold or
21 withdraw health care;



- 1 (2) Refusing to comply with a health care decision made
2 for an individual by another person if the refusal is
3 based on a reasonable belief that the person lacked
4 authority or capacity to make the decision;
- 5 (3) Complying with an advance health care directive based
6 on a reasonable belief that the directive is valid;
- 7 (4) Refusing to comply with an advance health care
8 directive based on a reasonable belief that the
9 directive is not valid, including a reasonable belief
10 that the directive was not made by the individual or,
11 after its creation, was substantively altered by a
12 person other than the individual who created it;
- 13 (5) Determining that a person who otherwise might be
14 authorized to act as an agent or default surrogate is
15 not reasonably available; or
- 16 (6) Complying with an individual's direction under
17 section -9(d).
- 18 (b) An agent, default surrogate, or person with a
19 reasonable belief that the person is an agent or a default
20 surrogate shall not be subject to civil or criminal liability or
21 to discipline for unprofessional conduct for a health care



1 decision made in a good faith effort to comply with
2 section -17.

3 § -24 **Prohibited conduct; damages.** (a) A person shall
4 not:

5 (1) Intentionally falsify, in whole or in part, an advance
6 health care directive;

7 (2) For the purpose of frustrating the intent of the
8 individual who created an advance health care
9 directive or with knowledge that doing so is likely to
10 frustrate the intent:

11 (A) Intentionally conceal, deface, obliterate, or
12 delete the directive or a revocation of the
13 directive without consent of the individual who
14 created or revoked the directive; or

15 (B) Intentionally withhold knowledge of the existence
16 or revocation of the directive from a responsible
17 health care professional or health care
18 institution providing health care to the
19 individual who created or revoked the directive;

20 (3) Coerce or fraudulently induce an individual to create,
21 revoke, or refrain from creating or revoking an



1 advance health care directive or a part of a
2 directive; or

3 (4) Require or prohibit the creation or revocation of an
4 advance health care directive as a condition for
5 providing health care.

6 (b) An individual who is the subject of conduct prohibited
7 under subsection (a), or the individual's estate, shall have a
8 cause of action against a person that violates subsection (a)
9 for statutory damages of \$25,000 or actual damages resulting
10 from the violation, whichever is greater.

11 (c) Subject to subsection (d), an individual who makes a
12 health care instruction, or the individual's estate, has a cause
13 of action against a health care professional or health care
14 institution that intentionally violates section -21 for
15 statutory damages of \$50,000 or actual damages resulting from
16 the violation, whichever is greater.

17 (d) A health care professional who is an emergency medical
18 services personnel or first responder personnel shall not be
19 liable under subsection (c) for a violation of section -21(e)
20 if:



1 (1) The violation occurs in the course of providing care
2 to an individual experiencing a health condition for
3 which the professional reasonably believes the care is
4 appropriate to avoid imminent loss of life or serious
5 harm to the individual or providing care;

6 (2) The failure to comply is consistent with accepted
7 standards of the profession of the professional; and

8 (3) The provision of care does not begin in a health care
9 institution in which the individual resides or was
10 receiving care.

11 (e) In an action under this section, a prevailing
12 plaintiff may recover reasonable attorney's fees, court costs,
13 and other reasonable litigation expenses.

14 (f) A cause of action or remedy under this section shall
15 be in addition to any cause of action or remedy under other law.

16 § -25 **Effect of copy; certified physical copy.** (a) A
17 physical or electronic copy of an advance health care directive,
18 revocation of an advance health care directive, or appointment,
19 designation, or disqualification of a surrogate shall have the
20 same effect as the original.



1 (b) An individual may create a certified physical copy of
2 an advance health care directive or revocation of an advance
3 health care directive that is in electronic form by affirming
4 under penalty of law that the physical copy is a complete and
5 accurate copy of the directive or revocation.

6 § -26 **Judicial relief.** (a) On petition of an
7 individual, the individual's surrogate, a health care
8 professional or health care institution providing health care to
9 the individual, or a person interested in the welfare of the
10 individual, the family court may:

11 (1) Enjoin implementation of a health care decision made
12 by an agent or default surrogate on behalf of the
13 individual, on a finding that the decision is
14 inconsistent with section -17 or -18;

15 (2) Enjoin an agent from making a health care decision for
16 the individual, on a finding that the individual's
17 appointment of the agent has been revoked or the
18 agent:

19 (A) Is disqualified under section -8(b);

20 (B) Is unwilling or unable to comply with
21 section -17; or



1 (C) Poses a danger to the individual's well-being;
 2 (3) Enjoin another person from acting as a default
 3 surrogate, on a finding that the other person acting
 4 as a default surrogate did not comply with
 5 section -12 or the other person:

6 (A) Is disqualified under section -13;

7 (B) Is unwilling or unable to comply with
 8 section -17; or

9 (C) Poses a danger to the well-being of the
 10 individual for whom the person is acting as a
 11 default surrogate; or

12 (4) Order the implementation of a health care decision
 13 made:

14 (A) By and for the individual; or

15 (B) By an agent or default surrogate who is acting in
 16 compliance with the powers and duties of the
 17 agent or default surrogate.

18 (b) In this chapter, advocacy for the withholding or
 19 withdrawal of health care or mental health care from an
 20 individual shall not by itself be evidence that an agent or

1 default surrogate, or a potential agent or default surrogate,
2 poses a danger to the individual's well-being.

3 (c) A petition filed under this section shall include
4 notice of the existence of an advance health care directive, if
5 applicable, and a copy of the directive shall be provided to the
6 court.

7 (d) A proceeding under this section shall be expedited on
8 motion by any party.

9 § -27 **Construction.** (a) Nothing in this chapter shall
10 be construed to authorize mercy killing, assisted suicide, or
11 euthanasia.

12 (b) This chapter shall not affect any other law of this
13 State governing treatment for mental illness of an individual
14 involuntarily committed, or an individual who is the subject of
15 an assisted community treatment order, under chapter 334.

16 (c) Death of an individual caused by withholding or
17 withdrawing health care in accordance with this chapter shall
18 not constitute a suicide or homicide or legally impair or
19 invalidate a policy of insurance or an annuity providing a death
20 benefit, notwithstanding any term of the policy or annuity.



1 (d) Nothing in this chapter shall create a presumption
2 concerning the intention of an individual who has not created an
3 advance health care directive.

4 (e) An advance health care directive created before, on,
5 or after January 1, 2026, shall be interpreted in accordance
6 with all other laws of this State, excluding the State's choice-
7 of-law rules, at the time the directive is implemented.

8 § -28 **Uniformity of application and construction.** In
9 applying and construing this chapter, a court may consider the
10 promotion of uniformity of the law among jurisdictions that
11 enact it.

12 § -29 **Saving provisions.** (a) An advance health care
13 directive created before January 1, 2026, shall be valid on
14 January 1, 2026, if it complies with this chapter or complied at
15 the time of creation with the law of the state in which it was
16 created.

17 (b) This chapter shall not affect the validity or effect
18 of an act done before January 1, 2026.

19 (c) A person who assumed authority to act as default
20 surrogate before January 1, 2026, may continue to act as default
21 surrogate until the individual for whom the default surrogate is



1 acting regains capacity to make health care decisions or the
2 default surrogate is disqualified, whichever occurs first.

3 **§ -30 Transitional provision.** This chapter shall apply
4 to an advance health care directive created before, on, or after
5 January 1, 2026."

6 SECTION 3. Section 286-109.4, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~§286-109.4~~ **Designation of advance ~~health-care~~**
9 **health care directive.** On the application form for any driver's
10 license or license renewal, the examiner of drivers shall ask
11 the applicant to designate whether the applicant has an advance
12 ~~health-care~~ health care directive. The examiner of drivers
13 shall issue or renew a license bearing the designation "advance
14 ~~health-care~~ health care directive", a symbol, or an
15 abbreviation thereof, for those applicants who have so
16 indicated. "Advance ~~health-care~~ health care directive" means
17 an individual instruction in writing, a living will, or a
18 durable power of attorney for health care decisions. No
19 specific medical treatment information shall be imprinted on the
20 driver's license."



1 SECTION 4. Section 286-303, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (d) to read:

4 "(d) The application also shall state whether the
5 applicant has an advance [~~health-care~~] health care directive.
6 If the applicant has an advance [~~health-care~~] health care
7 directive, the identification card shall bear the designation
8 "AHCD"."

9 2. By amending subsection (g) to read:

10 "(g) For the purpose of this section, "AHCD", which stands
11 for "advance [~~health-care~~] health care directive", means an
12 individual instruction in writing, a living will, or a durable
13 power of attorney for health care decisions."

14 SECTION 5. Section 321-23.6, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§321-23.6 Rapid identification documents.** (a) The
17 department shall adopt rules for emergency medical services that
18 shall include:

19 (1) Uniform methods of rapidly identifying an [~~adult~~
20 ~~person~~] individual who is an adult or emancipated
21 minor who has certified, or for whom has been



1 certified, in a written "comfort care only" document
2 that the [~~person~~] individual or, consistent with
3 chapter [~~327E7~~] ____, the [~~person's guardian, agent,~~
4 ~~or~~] individual's surrogate directs emergency medical
5 services personnel, first responder personnel, and
6 health care providers not to administer chest
7 compressions, rescue breathing, electric shocks, or
8 medication, or all of these, given to restart the
9 heart if the [~~person's~~] individual's breathing or
10 heart stops, and directs that the [~~person~~] individual
11 is to receive care for comfort only, including oxygen,
12 airway suctioning, splinting of fractures, pain
13 medicine, and other measures required for comfort;

14 (2) The written document containing the certification
15 shall be signed by the [~~patient~~] individual or [~~7~~
16 ~~consistent with chapter 327E7~~] the [~~person's guardian,~~
17 ~~agent, or~~] individual's surrogate, and by any two
18 other adult persons who personally know the [~~patient;~~]
19 individual; and

20 (3) The original or copy of the document, which may be in
21 an electronic form, containing the certification and



1 all three signatures shall be maintained by the
2 ~~[patient,]~~ individual, and if applicable, the
3 ~~[patient's:]~~ individual's:

4 (A) ~~[Physician,]~~ Responsible health care
5 professional;

6 (B) Attorney;

7 ~~[(C) Guardian;~~
8 ~~(D)]~~ (C) Surrogate; or

9 ~~[(E)]~~ (D) Any other person who may lawfully act on the
10 [patient's] individual's behalf.

11 ~~[Two copies of the document shall be given to the~~
12 ~~patient, or the patient's guardian, agent, or~~
13 ~~surrogate.]~~

14 (b) The rules shall provide for the following:

15 (1) The ~~[patient,]~~ individual, or the ~~[patient's guardian,~~
16 ~~agent, or]~~ individual's surrogate, may verbally revoke
17 the "comfort care only" document at any time,
18 including during the emergency situation;

19 (2) An anonymous tracking system shall be developed to
20 assess the success or failure of the procedures and to
21 ensure that abuse is not occurring; and



1 (3) If an emergency medical services [~~person,~~] personnel,
2 first responder[~~,~~] personnel, or any other health care
3 [~~provider~~] professional believes in good faith that
4 the [~~provider's~~] professional's safety, the safety of
5 the family or immediate bystanders, or the
6 [~~provider's~~] professional's own conscience requires
7 the [~~patient~~] individual be resuscitated despite the
8 presence of a "comfort care only" document, then that
9 [~~provider~~] professional may attempt to resuscitate
10 that [~~patient,~~] individual, and neither the [~~provider,~~
11 ~~the ambulance service,~~] professional, the emergency
12 medical services, nor any other person or entity shall
13 be liable for attempting to resuscitate the [~~patient~~]
14 individual against the [~~patient's will.~~] individual's
15 certification.

16 (c) As used in this section, unless the context clearly
17 requires otherwise:

18 "Emergency medical services personnel" has the same meaning
19 as in section 321-222.

20 "First responder personnel" has the same meaning as in
21 section 321-222.



1 "Health care professional" has the same meaning as in
2 section -2.

3 "Responsible health care professional" has the same meaning
4 as in section -2.

5 "Surrogate" has the same meaning as in section -2."

6 SECTION 6. Section 323G-3, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[~~§~~323G-3~~]~~ **Noninterference with existing health care**
9 **directives.** Nothing in this chapter shall be construed to
10 interfere with the rights of an agent operating under a valid
11 advance health care directive under [~~section 327E-3~~]
12 chapter or confer upon the caregiver any authority to make
13 health care decisions on behalf of the patient unless the
14 caregiver is designated as an agent in [~~a~~] an advanced health
15 care directive under [~~section 327E-3.~~] chapter ."

16 SECTION 7. Section 325-21, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) The sale of sterile hypodermic syringes in a
19 pharmacy, physician's office, or health care institution for the
20 purpose of preventing the transmission of dangerous blood-borne
21 diseases, may be made solely by:



- 1 (1) A pharmacist licensed under chapter 461;
- 2 (2) A physician as defined in section [~~327E-27~~] -2;
- 3 (3) A health care [~~provider~~] professional as defined in
- 4 section [~~327E-27~~] -2; or
- 5 (4) An authorized agent of a pharmacy, as defined in
- 6 section 461-1, or of a health care institution, as
- 7 defined in section [~~327E-27~~] -2, operating under
- 8 the direction of a licensed pharmacist or physician."

9 SECTION 8. Section 327-21, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 **"[~~§~~327-21~~]~~ Effect of anatomical gift on advance**
 12 **[~~health-care~~] health care directive.** (a) If a prospective
 13 donor has a declaration or advance [~~health-care~~] health care
 14 directive, and the terms of the declaration or directive and the
 15 express or implied terms of a potential anatomical gift are in
 16 conflict with regard to the administration of measures necessary
 17 to ensure the medical suitability of a body part for
 18 transplantation or therapy, the prospective donor's attending
 19 physician and prospective donor shall confer to resolve the
 20 conflict. If the prospective donor is incapable of resolving
 21 the conflict, an agent acting under the prospective donor's



1 declaration or directive, or, if none or if the agent is not
 2 reasonably available, another person authorized by law other
 3 than this chapter to make [~~health-care~~] health care decisions on
 4 behalf of the prospective donor, shall act for the donor to
 5 resolve the conflict. The conflict shall be resolved as
 6 expeditiously as possible. Information relevant to the
 7 resolution of the conflict may be obtained from the appropriate
 8 procurement organization and any other person authorized to make
 9 an anatomical gift for the prospective donor under section 327-
 10 9. Before resolution of the conflict, measures necessary to
 11 ensure the medical suitability of the body part may not be
 12 withheld or withdrawn from the prospective donor if withholding
 13 or withdrawing the measures is not contraindicated by
 14 appropriate end-of-life care.

15 (b) As used in this section:

16 [~~"Advance health care directive" means a record signed or~~
 17 ~~authorized by a prospective donor containing the prospective~~
 18 ~~donor's direction concerning a health care decision for the~~
 19 ~~prospective donor or a power of attorney for health care.]~~

20 "Advance health care directive" has the same meaning as in
 21 section -2.



1 "Declaration" means a record signed by a prospective donor
2 specifying the circumstances under which a life support system
3 may be withheld or withdrawn.

4 [~~"Health care decision"~~] "Health care decision" means any
5 decision regarding the health care of the prospective donor."

6 SECTION 9. Section 327K-1, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§327K-1 Definitions.** As used in this chapter, unless the
9 context otherwise requires:

10 "Department" means the department of health.

11 "Form" means a provider orders for life-sustaining
12 treatment form adopted by the department.

13 "Health care provider" means an individual licensed,
14 certified, or otherwise authorized or permitted by law to
15 provide health care in the ordinary course of the individual's
16 business or profession.

17 "Legally authorized representative" means an agent,
18 guardian, or surrogate, as those terms are defined in section
19 [~~327E-2,~~] -2 or agent designated through a power of attorney
20 for health care, as defined in section [~~327E-2,~~] -2.



1 "Patient's provider" means a physician licensed pursuant to
2 chapter 453, a physician assistant licensed pursuant to chapter
3 453, or an advanced practice registered nurse licensed pursuant
4 to chapter 457.

5 "Provider orders for life-sustaining treatment form" means
6 a form signed by a patient, or if incapacitated, by the
7 patient's legally authorized representative and the patient's
8 provider, that records the patient's wishes and that directs a
9 health care provider regarding the provision of resuscitative
10 and life-sustaining measures. A provider orders for life-
11 sustaining treatment form is not an advance [~~health-care~~] health
12 care directive."

13 SECTION 10. Section 432E-4, Hawaii Revised Statutes, is
14 amended by amending subsection (c) to read as follows:

15 "(c) The provider shall discuss with the enrollee and the
16 enrollee's immediate family both [~~+~~]advance[~~-~~health-care]
17 health care directives, as provided for in [~~chapter 327E, and~~
18 ~~durable powers of attorney in relation to medical treatment.~~]
19 chapter _____."

20 SECTION 11. Section 560:5-304, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) The petition shall set forth the petitioner's name,
2 residence, current address if different, relationship to the
3 respondent, and interest in the appointment and, to the extent
4 known, state or contain the following with respect to the
5 respondent and the relief requested:

6 (1) The respondent's name, age, principal residence,
7 current street address, and, if different, the address
8 of the dwelling in which it is proposed that the
9 respondent will reside if the appointment is made;

10 (2) The name and address of the respondent's:

11 (A) Spouse or reciprocal beneficiary, or if the
12 respondent has none, an adult with whom the
13 respondent has resided for more than six months
14 before the filing of the petition; and

15 (B) Adult children or, if the respondent has none,
16 the respondent's parents and adult siblings, or
17 if the respondent has none, at least one of the
18 adults nearest in kinship to the respondent who
19 can be found;

20 (3) The name and address of any person responsible for
21 care or custody of the respondent;



- 1 (4) The name and address of any legal representative of
- 2 the respondent;
- 3 (5) The name and address of any person nominated as
- 4 guardian by the respondent~~[+]~~, including, if
- 5 applicable, the nomination made in the respondent's
- 6 advance health care directive under
- 7 section -7(a)(4);
- 8 (6) The name and address of any agent appointed by the
- 9 respondent under any [~~medical~~] advance health care
- 10 directive [~~, mental health care directive, or health~~
- 11 ~~care power of attorney,~~] under section -8 or, if
- 12 none, any [~~designated~~] default surrogate under section
- 13 [~~327E-5(f);~~] -12;
- 14 (7) The name and address of any proposed guardian and the
- 15 reason why the proposed guardian should be selected;
- 16 (8) The reason why guardianship is necessary, including a
- 17 brief description of the nature and extent of the
- 18 respondent's alleged incapacity;
- 19 (9) If an unlimited guardianship is requested, the reason
- 20 why limited guardianship is inappropriate and, if a



1 limited guardianship is requested, the powers to be
2 granted to the limited guardian; and

3 (10) A general statement of the respondent's property with
4 an estimate of its value, including any insurance or
5 pension, and the source and amount of any other
6 anticipated income or receipts."

7 SECTION 12. Section 560:5-310, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By amending subsection (a) to read:

10 "(a) Subject to subsection (c), the court in appointing a
11 guardian shall consider persons otherwise qualified in the
12 following order of priority:

13 (1) A guardian, other than a temporary or emergency
14 guardian, currently acting for the respondent in this
15 State or elsewhere;

16 (2) A person nominated as guardian by the respondent,
17 including the respondent's most recent nomination made
18 in a durable power of attorney[~~r~~] or advance health
19 care directive if at the time of the nomination the
20 respondent had sufficient capacity to express a
21 preference;



- 1 (3) An agent appointed by the respondent under any
2 [medical] advance health care directive or health care
3 power of attorney or, if none, any [designated]
4 default surrogate under section [~~327E-5(f);~~] -12;
- 5 (4) The spouse or reciprocal beneficiary of the respondent
6 or a person nominated by will or other signed writing
7 of a deceased spouse or reciprocal beneficiary;
- 8 (5) An adult child of the respondent;
- 9 (6) A parent of the respondent, or an individual nominated
10 by will or other signed writing of a parent; and
- 11 (7) An adult with whom the respondent has resided for more
12 than six months before the filing of the petition."
- 13 2. By amending subsection (c) to read:
- 14 "(c) An owner, operator, [~~or~~] employee, or contractor of a
15 long-term care institution or other care settings at which the
16 respondent is receiving care may not be appointed as guardian
17 unless [~~related to the respondent by blood, marriage, or~~
18 ~~adoption,~~] the owner, operator, employee, or contractor is a
19 family member of the respondent, the cohabitant of the
20 respondent or a family member of the cohabitant, or otherwise



1 ordered by the court. As used in this subsection, "cohabitant"
2 and "family member" have the same meanings as in section -2."

3 SECTION 13. Section 560:5-316, Hawaii Revised Statutes, is
4 amended by amending subsections (c), and (d) as follows:

5 "(c) A guardian, without authorization of the court, shall
6 not:

7 (1) Revoke any health care [~~directions~~] instructions set
8 forth in any [~~medical~~] advance health care directive
9 or health care power of attorney of which the ward is
10 the principal; [~~provided that the appointment of a~~
11 ~~guardian shall automatically terminate the authority~~
12 ~~of any agent designated in the medical directive or~~
13 ~~health care power of attorney;~~] or

14 (2) Restrict the personal communication rights of the
15 ward, including the right to receive visitors,
16 telephone calls, and personal mail, unless deemed by
17 the guardian to pose a risk to the safety or well-
18 being of the ward.

19 (d) A guardian shall not initiate the commitment of a ward
20 to a mental [~~health-care~~] health care institution except in



1 accordance with the ward's advance health care directive or the
2 State's procedure for involuntary civil commitment."

3 SECTION 14. Section 671-3, Hawaii Revised Statutes, is
4 amended by amending subsection (e) as follows:

5 "(e) For purposes of this section, "legal surrogate" means
6 ~~[an agent designated in a power of attorney for health care or~~
7 ~~surrogate designated or selected in accordance with chapter~~
8 ~~327E.] an agent or default surrogate, as defined in~~
9 section -2."

10 SECTION 15. Chapter 327E, Hawaii Revised Statutes, is
11 repealed.

12 SECTION 16. Chapter 327G, Hawaii Revised Statutes, is
13 repealed.

14 SECTION 17. If any provision of this Act or the
15 application thereof to any person or circumstances is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

20 SECTION 18. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 19. This Act shall take effect on July 1, 3000.



Report Title:

Uniform Health Care Decisions Act (Modified); Advance Health Care Directives; Advance Mental Health Care Directives

Description:

Adopts the Uniform Health Care Decisions Act (2023), as modified, to replace chapters 327E and 327G, HRS. Effective 7/1/3000. (HD1)

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