
A BILL FOR AN ACT

RELATING TO HEALTH CARE.

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

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

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

12 "Advanced practice registered nurse" means a person
13 licensed pursuant to section 457-8.5 and who holds an accredited
14 national certification in an advanced practice registered nurse
15 psychiatric specialization.

16 "Agent" means an individual appointed under a power of
17 attorney for health care to make a health care decision for the
18 individual who made the appointment. "Agent" includes a
19 co-agent or alternate agent appointed under section -20.

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



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

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

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

10 "Electronic" means relating to technology having
11 electrical, digital, magnetic, wireless, optical,
12 electromagnetic, or similar capabilities.

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

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

17 "Family member" means a spouse, civil union partner, adult
18 child, parent, or grandparent, or an adult child of a spouse,
19 civil union partner, child, parent, or grandparent.

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



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

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

8 "Health care" includes mental health care.

9 "Health care decision" means a decision made by an
10 individual or the individual's surrogate regarding the
11 individual's health care, including:

12 (1) Selection or discharge of a health care professional
13 or health care institution;

14 (2) Approval or disapproval of a diagnostic test, surgical
15 procedure, medication, therapeutic intervention, or
16 other health care; and

17 (3) Direction to provide, withhold, or withdraw artificial
18 nutrition or hydration, mechanical ventilation, or
19 other health care.

20 "Health care institution" means a facility or agency
21 licensed, certified, or otherwise authorized or permitted by



1 other law to provide health care in this State in the ordinary
2 course of business.

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

9 "Health care professional" means a physician or other
10 individual licensed, certified, or otherwise authorized or
11 permitted by other law of this State to provide health care in
12 this State in the ordinary course of business or the practice of
13 the physician's or individual's profession.

14 "Individual" means an adult or emancipated minor.

15 "Mental health care" means care or treatment or a service
16 or procedure to maintain, monitor, diagnose, or otherwise affect
17 an individual's mental illness or other psychiatric,
18 psychological, or psychosocial condition.

19 "Minor" means a person under eighteen years of age.

20 "Nursing home" means a nursing facility as defined in
21 section 1919(a)(1) of the Social Security Act (42 U.S.C.



1 1396r(a)(1)), or skilled nursing facility as defined in section
2 1819(a)(1) of the Social Security Act (42 U.S.C. 1395i-3(a)(1)).

3 "Person" means an individual, estate, business or nonprofit
4 entity, government or governmental subdivision, agency, or
5 instrumentality, or other legal entity.

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

- 7 (1) The individual's surrogate;
- 8 (2) A family member of the individual;
- 9 (3) The cohabitant of the individual;
- 10 (4) A public entity providing health care case management
11 or protective services to the individual;
- 12 (5) A person appointed under any other law to make
13 decisions for the individual under a power of attorney
14 for finances; or
- 15 (6) A person that has an ongoing personal or professional
16 relationship with the individual, including a person
17 that has provided educational or health care services
18 or supported decision making to the individual.

19 "Physician" means an individual licensed to practice
20 medicine or osteopathic medicine under chapter 453.



1 "Psychologist" means an individual licensed to practice
2 psychology under chapter 465.

3 "Power of attorney for health care" means a record in which
4 an individual appoints an agent to make health care decisions
5 for the individual.

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

14 "Record" means information:

- 15 (1) Inscribed on a tangible medium; or
16 (2) Stored in an electronic or other medium and
17 retrievable in perceivable form.

18 "Responsible health care professional" means:

- 19 (1) A health care professional designated by an individual
20 or the individual's surrogate to have primary



1 responsibility for the individual's health care or for
2 overseeing a course of treatment; or

3 (2) In the absence of a designation under paragraph (1)
4 or, if the health care professional designated under
5 paragraph (1) is not reasonably available, a health
6 care professional who has primary responsibility for
7 overseeing the individual's health care or for
8 overseeing a course of treatment.

9 "Sign" means, with present intent to authenticate or adopt
10 a record:

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

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

14 "State" means a state of the United States, the District of
15 Columbia, Puerto Rico, the United States Virgin Islands, or any
16 other territory or possession subject to the jurisdiction of the
17 United States. "State" includes a federally recognized Indian
18 tribe.

19 "Supported decision making" means assistance, from one or
20 more persons of an individual's choosing, that helps the
21 individual make or communicate a decision, including by helping



1 the individual understand the nature and consequences of the
2 decision.

3 "Surrogate" means:

- 4 (1) An agent;
- 5 (2) A default surrogate; or
- 6 (3) A guardian authorized to make health care decisions.

7 § -3 **Capacity.** (a) An individual shall be deemed to
8 have capacity for the purpose of this chapter if the individual:

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



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

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

14 **§ -4 Presumption of capacity; overcoming presumption.**

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

18 (1) A court has found the individual lacks capacity to do
19 so; or

20 (2) The presumption is rebutted under subsection (b).



1 (b) Subject to sections -5 and -6, a presumption
2 under subsection (a) may be rebutted by a finding that the
3 individual lacks capacity:

4 (1) Subject to subsection (c), made on the basis of a
5 contemporaneous examination by any of the following
6 health care professionals:

7 (A) A physician;

8 (B) A psychologist; or

9 (C) An advanced practice registered nurse;

10 (2) Made in accordance with accepted standards of the
11 profession and the scope of practice of the health
12 care professional making the finding and to a
13 reasonable degree of certainty; and

14 (3) Documented in a record by the health care professional
15 making the finding that includes an opinion of the
16 cause, nature, extent, and probable duration of the
17 lack of capacity.

18 (c) The finding under subsection (b) shall not be made by:

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



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

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

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

12 § -5 **Notice of finding of lack of capacity.** (a) As
13 soon as reasonably feasible, a health care professional who
14 makes a finding under section -4(b) shall inform the
15 individual who is the subject of the finding or the individual's
16 responsible health care professional of the finding.

17 (b) As soon as reasonably feasible, a responsible health
18 care professional who is informed of a finding under
19 section -4(b) shall inform the individual who is the subject
20 of the finding and the individual's surrogate.



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

3 (1) By orally informing a responsible health care
4 professional;

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

8 (3) By another act that clearly indicates the individual's
9 objection.

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

12 (1) The individual withdraws the objection;

13 (2) A court finds the individual lacks the presumed
14 capacity;

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

19 (4) Subject to subsection (e), the finding is confirmed by
20 a second finding made by a health care professional
21 authorized under section -4(b)(1) who:



- 1 (A) Did not make the first finding;
- 2 (B) Is not a family member of the health care
- 3 professional who made the first finding; and
- 4 (C) Is not the cohabitant of the health care
- 5 professional who made the first finding or a
- 6 family member of the cohabitant.

7 (e) A second finding that the individual lacks capacity
8 under subsection (d)(4) shall not be sufficient to rebut the
9 presumption of capacity if the individual is requesting the
10 provision or continuation of life-sustaining treatment and the
11 finding is being used to make a decision to withhold or withdraw
12 the treatment.

13 (f) As soon as reasonably feasible, a health care
14 professional who is informed of an objection under
15 subsection (c) shall:

- 16 (1) Communicate the objection to a responsible health care
- 17 professional; and
- 18 (2) Document the objection and the date of the objection
- 19 in the individual's medical record or communicate the
- 20 objection and the date of the objection to an
- 21 administrator with responsibility for medical records



1 of the health care institution providing health care
2 to the individual, who shall document the objection
3 and the date of the objection in the individual's
4 medical record.

5 § -6 **Judicial review of finding of lack of capacity.**

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

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

20 § -7 **Health care instruction.** (a) An individual may
21 create a health care instruction that expresses the individual's



1 preferences for future health care, including preferences
2 regarding:

3 (1) Health care professionals or health care institutions;

4 (2) How a health care decision will be made and
5 communicated;

6 (3) Persons that should or should not be consulted
7 regarding a health care decision;

8 (4) A person to serve as guardian for the individual if
9 one is appointed; and

10 (5) An individual to serve as a default surrogate.

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

20 (c) A health care instruction made by an individual that
21 conflicts with an earlier health care instruction made by the



1 individual, including an instruction documented in a medical
2 order, shall revoke the earlier instruction to the extent of the
3 conflict.

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

6 § -8 Power of attorney for health care. (a) An
7 individual may create a power of attorney for health care to
8 appoint an agent to make health care decisions for the
9 individual.

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

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

17 (2) The potential agent is an owner, operator, employee,
18 or contractor of a nursing home, or other residential
19 care facility, in which the individual resides or is
20 receiving care, unless the owner, operator, employee,
21 or contractor is a family member of the individual,



1 the cohabitant of the individual, or a family member
2 of the cohabitant.

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

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

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

10 (2) Is not:

11 (A) The agent appointed by the individual;

12 (B) The agent's spouse, civil union partner, or
13 cohabitant;

14 (C) If the individual resides or is receiving care in
15 a nursing home or other residential care
16 facility, the owner, operator, employee, or
17 contractor of the nursing home or other
18 residential care facility;

19 (D) Related to the individual by blood, marriage, or
20 adoption; or



1 (E) Entitled to any portion of the estate upon the
2 individual's death; 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 or 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; and

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 directive shall be signed by the individual creating the advance
13 mental health care directive and at least two adult witnesses
14 who:

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

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

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

21 (2) Are not:



- 1 (A) The agent appointed by the individual;
- 2 (B) The agent's spouse, civil union partner, or
- 3 cohabitant;
- 4 (C) If the individual resides in a nursing home or
- 5 other residential care facility, the owner,
- 6 operator, employee, or contractor of the nursing
- 7 home or other residential care facility;
- 8 (D) Related to the individual by blood, marriage, or
- 9 adoption; or
- 10 (E) Entitled to any portion of the estate upon the
- 11 individual's death; and

12 (3) Are physically present in the same location as the
13 individual.

14 § -10 Relationship of advance mental health care

15 directive and other advance health care directive. (a) If a
16 direction in an advance mental health care directive of an
17 individual conflicts with a direction in another advance health
18 care directive of the individual, the later direction shall
19 revoke the earlier direction to the extent of the conflict.

20 (b) An appointment of an agent to make decisions only for
21 mental health care for an individual shall not revoke an earlier



1 appointment of an agent to make other health care decisions for
2 the individual.

3 (c) An appointment of an agent to make decisions only for
4 mental health care decisions for an individual shall revoke an
5 earlier appointment of an agent to make mental health care
6 decisions for the individual unless otherwise specified in the
7 later appointment.

8 (d) An appointment of an agent to make health care
9 decisions for an individual other than decisions about mental
10 health care shall not revoke a prior appointment of an agent to
11 make only mental health care decisions.

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

18 § -12 **Default surrogate.** (a) A default surrogate may
19 make a health care decision for an individual who lacks capacity
20 to make health care decisions and for whom an agent, or guardian



1 authorized to make health care decisions, has not been appointed
2 or is not reasonably available.

3 (b) Upon determination that an individual lacks capacity
4 to make health care decisions, a responsible health care
5 professional or the responsible health care professional's
6 designee shall make reasonable efforts to notify the individual
7 of the individual's lack of capacity to make health care
8 decisions. If the individual has not appointed an agent and the
9 individual retains capacity under section -3(a)(1) and
10 (2)(C), the individual may identify a person to act as a default
11 surrogate.

12 (c) Unless the individual has an advance health care
13 directive that indicates otherwise or the person identified by
14 the individual under subsection (b) is designated as a default
15 surrogate, the responsible health care professional or the
16 responsible health care professional's designee shall make
17 reasonable efforts to locate as many interested persons as
18 practicable, and the responsible health care professional or the
19 responsible health care professional's designee may rely on the
20 interested persons to notify other family members or interested
21 persons. Upon locating interested persons, the responsible



1 health care professional or the responsible health care
2 professional's designee shall inform the interested persons of
3 the individual's lack of capacity and that a default surrogate
4 should be selected for the individual.

5 (d) Interested persons shall make reasonable efforts to
6 reach a consensus as to who among them shall act as the
7 individual's default surrogate. If the person selected to act
8 as the individual's default surrogate is disqualified or becomes
9 disqualified under section -13, the interested persons shall
10 make reasonable efforts to reach consensus as to who among them
11 shall act as the individual's default surrogate.

12 The person selected to act as the individual's default
13 surrogate shall be the person who has a close relationship with
14 the individual and who is the most likely to be currently
15 informed of the individual's wishes regarding health care
16 decisions.

17 (e) If any of the interested persons disagrees with the
18 selection of the default surrogate or the health care decision
19 by the default surrogate, or, if after reasonable efforts the
20 interested persons are unable to reach a consensus as to who
21 should act as the default surrogate, any of the interested



1 persons may seek guardianship of the individual by initiating
2 guardianship proceedings pursuant to chapter 551 or 560, as
3 applicable. Only interested persons involved in the discussions
4 to choose a default surrogate may initiate such proceedings with
5 regard to the individual.

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

- 12 (1) The name of the person who seeks to assume the
13 authority to act as a default surrogate;
- 14 (2) An affirmation that the person understands that the
15 statements and affirmations are made under the penalty
16 of law;
- 17 (3) An affirmation that the person had a relationship with
18 the individual who lacks capacity before the
19 individual becoming incapacitated;



- 1 (4) A statement defining that relationship, including
- 2 identifying the relationship of the person to the
- 3 individual;
- 4 (5) If the person is not a family member or cohabitant, a
- 5 statement describing how the person exhibited special
- 6 care and concern for the individual who lacks capacity
- 7 and is familiar with the individual's personal values;
- 8 (6) An affirmation that the person understands that the
- 9 health care professional will reasonably rely on the
- 10 person's representations in the declaration to assist
- 11 in providing medical treatment; and
- 12 (7) A statement that the declaration was provided under
- 13 the penalty of law.
- 14 (g) If a responsible health care professional reasonably
- 15 determines that a person who assumed authority to act as a
- 16 default surrogate is not willing or able to comply with a duty
- 17 under section -17 or fails to comply with the duty in a
- 18 timely manner, the responsible health care professional may
- 19 request interested persons to choose another default surrogate.
- 20 (h) A health care decision made by a default surrogate
- 21 shall be effective without judicial approval.



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

6 § -13 **Disqualification to act as default surrogate.** (a)

7 An individual for whom a health care decision would be made may
8 disqualify a person from acting as default surrogate for the
9 individual by expressing the wish to disqualify that person.
10 The disqualification shall be in a record signed by the
11 individual or communicated verbally or nonverbally by the
12 individual to the person being disqualified, another person, or
13 a responsible health care professional. If the individual has
14 expressed that the individual did not want a particular person
15 to make health care decisions for the individual, that person
16 shall be disqualified from being a default surrogate.
17 Disqualification under this subsection shall be effective even
18 if made by an individual who is found under section -4(b) or
19 by a court to lack capacity to make a health care decision if
20 the individual clearly communicates a desire that the person



1 being disqualified not make health care decisions for the
2 individual.

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

6 (1) A court finds that the potential default surrogate
7 poses a danger to the individual's well-being, even if
8 the court does not issue a restraining order or
9 injunction against the potential default surrogate;

10 (2) The potential default surrogate is an owner, operator,
11 employee, or contractor of a nursing home or other
12 residential care facility in which the individual is
13 residing or receiving care unless the owner, operator,
14 employee, or contractor is a family member of the
15 individual, the cohabitant of the individual, or a
16 family member of the cohabitant;

17 (3) The potential default surrogate refuses to provide a
18 timely declaration under section -12(f) upon the
19 request by a responsible health care professional; or

20 (4) The potential default surrogate is the individual's
21 spouse or civil union partner, and:



- 1 (A) A petition for annulment, divorce, or dissolution
- 2 of marriage, legal separation, or termination has
- 3 been filed and not dismissed or withdrawn;
- 4 (B) A decree of annulment, divorce, or dissolution of
- 5 marriage, legal separation, or termination has
- 6 been issued;
- 7 (C) The individual and the spouse or civil union
- 8 partner have agreed in a record to a legal
- 9 separation; or
- 10 (D) The spouse or civil union partner has abandoned
- 11 or deserted the individual for more than one
- 12 year.

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

18 § -14 **Revocation.** (a) An individual may revoke the
19 appointment of an agent, the designation of a default surrogate,
20 or a health care instruction in whole or in part, unless:

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



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

5 (3) The individual created an advance mental health care
6 directive that includes the provision under
7 section -9(d) and the individual is experiencing
8 the psychiatric or psychological event specified in
9 the directive.

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

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

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



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

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

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

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

10 § -15 **Withdrawal of agent.** An agent may withdraw by
11 giving notice to the individual for whom the agent is acting, if
12 the individual has capacity at the time. If the individual is
13 found under section -4(b) or by a court to lack capacity, the
14 agent may withdraw by giving notice to a responsible health care
15 professional.

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

19 (1) The law of the state specified in the directive or, if
20 a state is not specified, the state in which the
21 individual created the directive; or



1 (2) This chapter.

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

6 (c) An advance health care directive, revocation of a
7 directive, or a signature on a directive or revocation shall not
8 be denied legal effect or enforceability solely because it is in
9 electronic form.

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

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

16 (f) If this chapter conflicts with other laws of this
17 State relating to the creation, execution, implementation, or
18 revocation of an advance health care directive, this chapter
19 shall prevail.

20 § -17 **Duties of agent and default surrogate.** (a) An
21 agent or default surrogate shall have a fiduciary duty to the



1 individual for whom the agent or default surrogate is acting
2 when exercising or purporting to exercise a power under
3 section -18.

4 (b) An agent or a default surrogate shall make a health
5 care decision in accordance with the direction of the individual
6 in an advance health care directive and other goals,
7 preferences, and wishes of the individual to the extent known or
8 reasonably ascertainable by the agent or default surrogate.

9 (c) If there is not a direction in an advance health care
10 directive and the goals, preferences, and wishes of the
11 individual regarding a health care decision are not known or
12 reasonably ascertainable by the agent or default surrogate, the
13 agent or default surrogate shall make the decision in accordance
14 with the agent's or default surrogate's determination of the
15 individual's best interest.

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

18 (1) Give primary consideration to the individual's
19 contemporaneous communications, including verbal and
20 nonverbal expressions;



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

4 (3) Consider the risks and benefits of the potential
5 health care decision.

6 (e) As soon as reasonably feasible, an agent or a default
7 surrogate who is informed of a revocation of an advance health
8 care directive or disqualification of the agent or default
9 surrogate shall communicate the revocation or disqualification
10 to a responsible health care professional.

11 **§ -18 Powers of agent and default surrogate. (a)**

12 Except as provided in subsection (c), the power of an agent or a
13 default surrogate shall commence when the individual is found
14 under section -4(b) or by a court to lack capacity to make a
15 health care decision. The power shall cease if the individual
16 is later found to have capacity to make a health care decision
17 or the individual objects under section -5(c) to the finding
18 of lack of capacity under section -4(b). The power shall
19 resume if:

20 (1) The power ceased because the individual objected under
21 section -5(c); and



1 (2) The finding of lack of capacity is confirmed under
2 section -5(d)(4) or a court finds that the
3 individual lacks capacity to make a health care
4 decision.

5 (b) An agent or a default surrogate may request, receive,
6 examine, copy, and consent to the disclosure of medical and
7 other health care information about the individual if the
8 individual would have the right to request, receive, examine,
9 copy, or consent to the disclosure of the information.

10 (c) A power of attorney for health care may provide that
11 the power of an agent under subsection (b) commences on
12 appointment.

13 (d) If no other person is authorized to do so, an agent or
14 a default surrogate may apply for private health insurance and
15 benefits on behalf of the individual. An agent or a default
16 surrogate who may apply for insurance and benefits shall not,
17 solely by reason of the power, have a duty to apply for the
18 insurance or benefits.

19 A default surrogate may act as a medicaid authorized
20 representative, pursuant to federal and state medicaid laws
21 relating to authorized representatives, on the individual's



1 behalf for the purposes of medicaid, including assisting with,
2 submitting, and executing a medicaid application,
3 redetermination of eligibility, or other ongoing
4 medicaid-related communications with the department of human
5 services. For the purposes of medicaid, the default surrogate
6 may access medicaid records of the individual on whose behalf
7 the default surrogate is designated to act. For a default
8 surrogate to be able to act under this subsection, the default
9 surrogate shall agree to be legally bound by the federal and
10 state authorities related to authorized representatives,
11 including maintaining the confidentiality of any information
12 provided by the department of human services, in compliance with
13 all federal and state confidentiality laws.

14 The agent or default surrogate's status as an authorized
15 representative for the purposes of medicaid shall terminate when
16 revoked by an individual who no longer lacks capacity, upon
17 appointment or availability of another agent or guardian, or
18 upon the individual's death.

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



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

4 (2) The admission is for not more than the maximum of the
5 number of days specified in the directive or thirty
6 days, whichever is less.

7 (f) An agent or a default surrogate may consent to
8 placement of the individual in a nursing home without specific
9 authorization by the individual; provided that if the placement
10 is intended to be for more than one hundred days, an agent or a
11 default surrogate shall not consent to placement of the
12 individual in a nursing home if:

13 (1) An alternative living arrangement is reasonably
14 feasible;

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

16 (3) The individual is not terminally ill.

17 Nothing in this subsection shall prevent an agent or a
18 default surrogate from consenting to placement of the individual
19 in a nursing home for more than one hundred days if the
20 individual specifically authorizes the agent or default



1 surrogate to do so in an advance health care directive in a
2 record.

3 § **-19 Limitation on powers.** (a) If an individual has a
4 long-term disability requiring routine treatment by artificial
5 nutrition, hydration, or mechanical ventilation and a history of
6 using the treatment without objection, an agent or default
7 surrogate shall not consent to withhold or withdraw the
8 treatment unless:

- 9 (1) The treatment is not necessary to sustain the
10 individual's life or maintain the individual's
11 well-being;
- 12 (2) The individual has expressly authorized the
13 withholding or withdrawal in a health care instruction
14 that has not been revoked; or
- 15 (3) The individual has experienced a major reduction in
16 health or functional ability from which the individual
17 is not expected to recover, even with other
18 appropriate treatment, and the individual has not:
- 19 (A) Given a direction inconsistent with withholding
20 or withdrawal; or



1 (B) Communicated by verbal or nonverbal expression a
2 desire for artificial nutrition, hydration, or
3 mechanical ventilation.

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

- 6 (1) May not be made by a guardian; or
- 7 (2) May be made by a guardian only if the court appointing
- 8 the guardian specifically authorizes the guardian to
- 9 make the decision.

10 § -20 **Co-agents; alternate agent.** (a) An individual
11 may appoint multiple individuals as co-agents in a power of
12 attorney for health care. Unless the power of attorney for
13 health care provides otherwise, each co-agent may exercise
14 independent authority.

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



1 (c) Unless the power of attorney for health care provides
2 otherwise, an alternate agent shall have the same authority as
3 the original agent:

4 (1) At any time the original agent is not reasonably
5 available or is otherwise unwilling or unable to act,
6 for the duration of the unavailability, unwillingness,
7 or inability to act; or

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

11 § -21 Duties of health care professional, responsible
12 health care professional, and health care institution. (a) A
13 responsible health care professional who is aware that an
14 individual has been found under section -4(b) or by a court
15 to lack capacity to make a health care decision shall make a
16 reasonable effort to determine if the individual has a
17 surrogate.

18 (b) If possible before implementing a health care decision
19 made by a surrogate, a responsible health care professional as
20 soon as reasonably feasible shall communicate to the individual
21 the decision made and the identity of the surrogate.



1 (c) A responsible health care professional who makes or is
2 informed of a finding that an individual lacks capacity to make
3 a health care decision or no longer lacks capacity, or that
4 other circumstances exist that affect a health care instruction
5 or the authority of a surrogate, as soon as reasonably feasible,
6 shall:

- 7 (1) Document the finding or circumstance in the
8 individual's medical record; and
- 9 (2) If possible, communicate to the individual and the
10 individual's surrogate the finding or circumstance and
11 that the individual may object under section -5(c)
12 to the finding under section -4(b).

13 (d) A responsible health care professional who is informed
14 that an individual has created or revoked an advance health care
15 directive, or that a surrogate for an individual has been
16 appointed, designated, or disqualified, or has withdrawn, shall:

- 17 (1) Document the information as soon as reasonably
18 feasible in the individual's medical record; and
- 19 (2) If evidence of the directive, revocation, appointment,
20 designation, disqualification, or withdrawal is in a



1 record, request a copy and, on receipt, cause the copy
2 to be included in the individual's medical record.

3 (e) Except as provided in subsections (f) and (g), a
4 health care professional or health care institution providing
5 health care to an individual shall comply with:

6 (1) A health care instruction given by the individual
7 regarding the individual's health care;

8 (2) A reasonable interpretation by the individual's
9 surrogate of an instruction given by the individual;
10 and

11 (3) A health care decision for the individual made by the
12 individual's default surrogate in accordance with
13 sections -17 and -18 to the same extent as if
14 the decision had been made by the individual at a time
15 when the individual had capacity.

16 (f) A health care professional or a health care
17 institution may refuse to provide health care consistent with a
18 health care instruction or health care decision if:

19 (1) The instruction or decision is contrary to a policy of
20 the health care institution providing care to the
21 individual and the policy was timely communicated to



1 the individual with capacity or to the individual's
2 surrogate;

3 (2) The care would require health care that is not
4 available to the health care professional or health
5 care institution; or

6 (3) Compliance with the instruction or decision would:

7 (A) Require the health care professional to provide
8 care that is contrary to the health care
9 professional's religious belief or moral
10 conviction and if other law permits the health
11 care professional to refuse to provide care for
12 that reason;

13 (B) Require the health care professional or health
14 care institution to provide care that is contrary
15 to generally accepted health care standards
16 applicable to the health care professional or
17 health care institution; or

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

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



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

4 (2) Immediately make a reasonable effort to transfer the
5 individual to another health care professional or
6 health care institution that is willing to comply with
7 the instruction or decision and provide
8 life-sustaining care and care needed to keep or make
9 the individual comfortable, consistent with accepted
10 medical standards to the extent feasible, until a
11 transfer is made.

12 § -22 **Decision by guardian.** (a) A guardian may refuse
13 to comply with or revoke the individual's advance health care
14 directive only if the court appointing the guardian expressly
15 orders the noncompliance or revocation.

16 (b) Unless a court orders otherwise, a health care
17 decision made by an agent appointed by an individual subject to
18 guardianship prevails over a decision of the guardian appointed
19 for the individual.

20 § -23 **Immunity.** (a) A health care professional or
21 health care institution acting in good faith shall not be



1 subject to civil or criminal liability or to discipline for
2 unprofessional conduct for:

- 3 (1) Complying with a health care decision made for an
4 individual by another person if compliance is based on
5 a reasonable belief that the person has authority to
6 make the decision, including a decision to withhold or
7 withdraw health care;
- 8 (2) Refusing to comply with a health care decision made
9 for an individual by another person if the refusal is
10 based on a reasonable belief that the person lacked
11 authority or capacity to make the decision;
- 12 (3) Complying with an advance health care directive based
13 on a reasonable belief that the directive is valid;
- 14 (4) Refusing to comply with an advance health care
15 directive based on a reasonable belief that the
16 directive is not valid, including a reasonable belief
17 that the directive was not made by the individual or,
18 after its creation, was substantively altered by a
19 person other than the individual who created it;



1 (5) Determining that a person who otherwise might be
2 authorized to act as an agent or default surrogate is
3 not reasonably available; or

4 (6) Complying with an individual's direction under
5 section -9(d).

6 (b) An agent, default surrogate, or person with a
7 reasonable belief that the person is an agent or a default
8 surrogate shall not be subject to civil or criminal liability or
9 to discipline for unprofessional conduct for a health care
10 decision made in a good faith effort to comply with
11 section -17.

12 § -24 Prohibited conduct; damages. (a) A person shall
13 not:

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

16 (2) For the purpose of frustrating the intent of the
17 individual who created an advance health care
18 directive or with knowledge that doing so is likely to
19 frustrate the intent:

20 (A) Intentionally conceal, deface, obliterate, or
21 delete the directive or a revocation of the



1 directive without consent of the individual who
2 created or revoked the directive; or

3 (B) Intentionally withhold knowledge of the existence
4 or revocation of the directive from a responsible
5 health care professional or health care
6 institution providing health care to the
7 individual who created or revoked the directive;

8 (3) Coerce or fraudulently induce an individual to create,
9 revoke, or refrain from creating or revoking an
10 advance health care directive or a part of a
11 directive; or

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

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

20 (c) Subject to subsection (d), an individual who makes a
21 health care instruction, or the individual's estate, shall have



1 a cause of action against a health care professional or health
2 care institution that intentionally violates section -21 for
3 statutory damages of \$5,000 or actual damages resulting from the
4 violation, whichever is greater.

5 (d) An emergency department of a health care institution
6 or health care professional who is an emergency medical services
7 personnel or first responder personnel shall not be liable under
8 subsection (c) for a violation of section -21(e) if:

9 (1) The violation occurs in the course of providing care
10 to an individual experiencing a health condition for
11 which the professional reasonably believes the care is
12 appropriate to avoid imminent loss of life or serious
13 harm to the individual or providing care;

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

16 (3) The provision of care does not begin in a health care
17 institution in which the individual resides or was
18 receiving care.

19 (e) In an action under this section, a prevailing
20 plaintiff may recover reasonable attorneys' fees, court costs,
21 and other reasonable litigation expenses.



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

3 § -25 **Effect of copy; certified physical copy.** (a) A
4 physical or electronic copy of an advance health care directive,
5 revocation of an advance health care directive, or appointment,
6 designation, or disqualification of a surrogate shall have the
7 same effect as the original.

8 (b) An individual may create a certified physical copy of
9 an advance health care directive or revocation of an advance
10 health care directive that is in electronic form by affirming
11 under penalty of law that the physical copy is a complete and
12 accurate copy of the directive or revocation.

13 § -26 **Judicial relief.** (a) On petition of an
14 individual, the individual's surrogate, a health care
15 professional or health care institution providing health care to
16 the individual, or a person interested in the welfare of the
17 individual, the family court may:

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



- 1 (2) Enjoin an agent from making a health care decision for
2 the individual, on a finding that the individual's
3 appointment of the agent has been revoked or the
4 agent:
5 (A) Is disqualified under section -8(b);
6 (B) Is unwilling or unable to comply with
7 section -17; or
8 (C) Poses a danger to the individual's well-being;
9 (3) Enjoin another person from acting as a default
10 surrogate, on a finding that the other person acting
11 as a default surrogate did not comply with
12 section -12 or the other person:
13 (A) Is disqualified under section -13;
14 (B) Is unwilling or unable to comply with
15 section -17; or
16 (C) Poses a danger to the well-being of the
17 individual for whom the person is acting as a
18 default surrogate; or
19 (4) Order the implementation of a health care decision
20 made:
21 (A) By and for the individual; or



1 (B) By an agent or default surrogate who is acting in
2 compliance with the powers and duties of the
3 agent or default surrogate.

4 (b) In this chapter, advocacy for the withholding or
5 withdrawal of health care or mental health care from an
6 individual shall not by itself be evidence that an agent or
7 default surrogate, or a potential agent or default surrogate,
8 poses a danger to the individual's well-being.

9 (c) A petition filed under this section shall include
10 notice of the existence of an advance health care directive, if
11 applicable, and a copy of the directive shall be provided to the
12 court.

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

15 § -27 **Construction.** (a) Nothing in this chapter shall
16 be construed to authorize mercy killing, assisted suicide, or
17 euthanasia.

18 (b) This chapter shall not affect any other laws of this
19 State governing treatment for mental illness of an individual
20 involuntarily committed, or an individual who is the subject of
21 an assisted community treatment order, under chapter 334.



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

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

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

13 § -28 **Uniformity of application and construction.** In
14 applying and construing this chapter, a court may consider the
15 promotion of uniformity of the law among jurisdictions that
16 enact it.

17 § -29 **Saving provisions.** (a) An advance health care
18 directive created before January 1, 2026, shall be valid on
19 January 1, 2026, if it complies with this chapter or complied at
20 the time of creation with the law of the state in which it was
21 created.



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

3 (c) A person who assumed authority to act as default
4 surrogate before January 1, 2026, may continue to act as default
5 surrogate until the individual for whom the default surrogate is
6 acting regains capacity to make health care decisions or the
7 default surrogate is disqualified, whichever occurs first.

8 § -30 **Transitional provision.** This chapter shall apply
9 to an advance health care directive created before, on, or after
10 January 1, 2026."

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

13 "[~~f~~]**§286-109.4**[~~}]~~ **Designation of advance [~~health-care~~]**
14 **health care directive.** On the application form for any driver's
15 license or license renewal, the examiner of drivers shall ask
16 the applicant to designate whether the applicant has an advance
17 [~~health-care~~] health care directive. The examiner of drivers
18 shall issue or renew a license bearing the designation "advance
19 [~~health-care~~] health care directive", a symbol, or an
20 abbreviation thereof, for those applicants who have so
21 indicated. "Advance [~~health-care~~] health care directive" means



1 an individual instruction in writing, a living will, or a
2 durable power of attorney for health care decisions. No
3 specific medical treatment information shall be imprinted on the
4 driver's license."

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

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

8 "(d) The application also shall state whether the
9 applicant has an advance [~~health-care~~] health care directive.
10 If the applicant has an advance [~~health-care~~] health care
11 directive, the identification card shall bear the designation
12 "AHCD"."

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

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

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



1 **"§321-23.6 Rapid identification documents.** (a) The
2 department shall adopt rules for emergency medical services that
3 shall include:

- 4 (1) Uniform methods of rapidly identifying an [~~adult~~
5 ~~person~~] individual who is an adult or emancipated
6 minor who has certified, or for whom has been
7 certified, in a written "comfort care only" document
8 that the [~~person~~] individual or [~~consistent with~~
9 ~~chapter 327E, the person's guardian, agent, or~~] the
10 individual's surrogate directs emergency medical
11 services personnel, first responder personnel, and
12 health care providers not to administer chest
13 compressions, rescue breathing, electric shocks, or
14 medication, or all of these, given to restart the
15 heart if the [~~person's~~] individual's breathing or
16 heart stops, and directs that the [~~person~~] individual
17 is to receive care for comfort only, including oxygen,
18 airway suctioning, splinting of fractures, pain
19 medicine, and other measures required for comfort;
- 20 (2) The written document containing the certification
21 shall be signed by the [~~patient~~] individual or [



1 ~~consistent with chapter 327E, the person's guardian,~~
2 ~~agent, or] the individual's surrogate, and by any two~~
3 ~~other adult persons who personally know the [patient,]~~
4 ~~individual; and~~

5 (3) The original or copy of the document, which may be in
6 an electronic form, containing the certification and
7 all three signatures shall be maintained by the
8 ~~[patient,]~~ individual, and if applicable, the
9 ~~[patient's:]~~ individual's:

10 (A) ~~[Physician,]~~ Responsible health care
11 professional;

12 (B) Attorney;

13 ~~[(C) Guardian;~~

14 ~~+(D)] (C) Surrogate; or~~

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

17 ~~[Two copies of the document shall be given to the~~
18 ~~patient, or the patient's guardian, agent, or~~
19 ~~surrogate.]~~

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



- 1 (1) The [~~patient,~~] individual, or the [~~patient's guardian,~~
2 agent, ~~or~~] individual's surrogate, may verbally revoke
3 the "comfort care only" document at any time,
4 including during the emergency situation;
- 5 (2) An anonymous tracking system shall be developed to
6 assess the success or failure of the procedures and to
7 ensure that abuse is not occurring; and
- 8 (3) If an emergency medical services [~~person,~~] personnel,
9 first responder[~~,~~] personnel, or any other health care
10 [~~provider~~] professional believes in good faith that
11 the [~~provider's~~] professional's safety, the safety of
12 the family or immediate bystanders, or the
13 [~~provider's~~] professional's own conscience requires
14 the [~~patient~~] individual be resuscitated despite the
15 presence of a "comfort care only" document, then that
16 [~~provider~~] professional may attempt to resuscitate
17 that [~~patient,~~] individual, and neither the [~~provider,~~
18 the ambulance service,~~,~~] professional, the emergency
19 medical services, nor any other person or entity shall
20 be liable for attempting to resuscitate the [~~patient~~]



1 individual against the [~~patient's will.~~] individual's
2 certification.

3 (c) For the purposes of this section:

4 "Emergency medical services personnel" has the same meaning
5 as defined in section 321-222.

6 "First responder personnel" has the same meaning as defined
7 in section 321-222.

8 "Health care professional" has the same meaning as defined
9 in section -2.

10 "Responsible health care professional" has the same meaning
11 as defined in section -2.

12 "Surrogate" has the same meaning as defined in
13 section -2."

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

16 "~~{~~§323G-3~~}~~ **Noninterference with existing health care**
17 **directives.** Nothing in this chapter shall be construed to
18 interfere with the rights of an agent operating under a valid
19 advance health care directive under [~~section 327E-3~~]
20 chapter or confer upon the caregiver any authority to make
21 health care decisions on behalf of the patient unless the



1 caregiver is designated as an agent in [a] an advance health
2 care directive under [~~section 327E-3.~~] chapter _____."

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

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

9 (1) A pharmacist licensed under chapter 461;

10 (2) A physician as defined in section [~~327E-2.~~] _____-2;

11 (3) A health care [~~provider~~] professional as defined in
12 section [~~327E-2.~~] _____-2; or

13 (4) An authorized agent of a pharmacy, as defined in
14 section 461-1, or of a health care institution, as
15 defined in section [~~327E-2.~~] _____-2, operating under
16 the direction of a licensed pharmacist or physician."

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

19 "[+]§327-21[+] **Effect of anatomical gift on advance**

20 [~~health-care~~] health care directive. (a) If a prospective

21 donor has a declaration or advance [~~health-care~~] health care



1 directive, and the terms of the declaration or directive and the
2 express or implied terms of a potential anatomical gift are in
3 conflict with regard to the administration of measures necessary
4 to ensure the medical suitability of a body part for
5 transplantation or therapy, the prospective donor's attending
6 physician and prospective donor shall confer to resolve the
7 conflict. If the prospective donor is incapable of resolving
8 the conflict, an agent acting under the prospective donor's
9 declaration or directive, or, if none or if the agent is not
10 reasonably available, another person authorized by law other
11 than this chapter to make [~~health-care~~] health care decisions on
12 behalf of the prospective donor, shall act for the donor to
13 resolve the conflict. The conflict shall be resolved as
14 expeditiously as possible. Information relevant to the
15 resolution of the conflict may be obtained from the appropriate
16 procurement organization and any other person authorized to make
17 an anatomical gift for the prospective donor under section
18 327-9. Before resolution of the conflict, measures necessary to
19 ensure the medical suitability of the body part may not be
20 withheld or withdrawn from the prospective donor if withholding



1 or withdrawing the measures is not contraindicated by
2 appropriate end-of-life care.

3 (b) As used in this section:

4 [~~"Advance health care directive" means a record signed or~~
5 ~~authorized by a prospective donor containing the prospective~~
6 ~~donor's direction concerning a health care decision for the~~
7 ~~prospective donor or a power of attorney for health care.]~~

8 "Advance health care directive" has the same meaning as
9 defined in section -2.

10 "Declaration" means a record signed by a prospective donor
11 specifying the circumstances under which a life support system
12 may be withheld or withdrawn.

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

15 SECTION 9. Section 327K-1, Hawaii Revised Statutes, is
16 amended as follows:

17 1. By amending the definition of "legally authorized
18 representative" to read:

19 ""Legally authorized representative" means an agent,
20 guardian, or surrogate, as those terms are defined in section



1 [327E-2,] -2, or agent designated through a power of attorney
2 for health care, as defined in section [327E-2.] -2."

3 2. By amending the definition of "provider orders for
4 life-sustaining treatment form" to read:

5 ""Provider orders for life-sustaining treatment form" means
6 a form signed by a patient[7] 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[7] 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~~] shall not be appointed as
17 guardian unless [~~related to the respondent by blood, marriage,~~
18 ~~or 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
21 ordered by the court. As used in this subsection, "cohabitant"



1 and "family member" have the same meanings as defined in
2 section -2."

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

5 "(e) For the purposes of this section, "legal surrogate"
6 means [~~an agent designated in a power of attorney for health~~
7 ~~care or surrogate designated or selected in accordance with~~
8 ~~chapter 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 upon its approval.



S.B. NO. 1323
S.D. 2
H.D. 2
C.D. 1

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 existing chapters related to advance health care directives and advance mental health care directives.
(CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

