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# 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.

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1        Among other things, the Uniform Health-Care Decisions Act  
2        (2023) expands upon the framework for determining whether an  
3        individual has capacity, removes legal hurdles for creating  
4        advance directives, addresses both advance health care  
5        directives and advance mental health care directives within the  
6        same statutory framework, and allows an individual to assent to  
7        a "Ulysses clause" in an advance mental health care directive,  
8        which allows an individual to include an instruction that  
9        prevents the individual from revoking the advance directive if  
10       the individual is experiencing a psychiatric or psychological  
11       event specified in the directive.

12       Therefore, the purpose of this Act is to update laws  
13       concerning advance health care directives and advance mental  
14       health care directives by adopting the Uniform Health-Care  
15       Decisions Act (2023) in amended form.

16       SECTION 2. The Hawaii Revised Statutes is amended by  
17       adding a new chapter to be appropriately designated and to read  
18       as follows:

19                                **"CHAPTER**

20                                **HEALTH CARE DECISIONS**

21        **§ -1 Short title.** This chapter may be cited as the  
22        Uniform Health Care Decisions Act (modified).

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1       **§ -2 Definitions.** As used in this chapter, unless the  
2 context clearly requires otherwise:

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

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

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

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

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

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

21       "Cohabitant" means each of two individuals who have been  
22 living together as a couple for at least one year after each

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1 became an adult or was emancipated, and who are not married to  
2 each other or are not in a civil union with each other.

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

6 "Electronic" means relating to technology having  
7 electrical, digital, magnetic, wireless, optical,  
8 electromagnetic, or similar capabilities.

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

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

13 "Family member" means a spouse, civil union partner, adult  
14 child, parent, or grandparent, or an adult child of a spouse,  
15 civil union partner, child, parent, or grandparent.

16 "First responder personnel" has the same meaning as in  
17 section 321-222.

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

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

4 "Health care" includes mental health care.

5 "Health care decision" means a decision made by an  
6 individual or the individual's surrogate regarding the  
7 individual's health care, including:

8 (1) Selection or discharge of a health care professional  
9 or health care institution;

10 (2) Approval or disapproval of a diagnostic test, surgical  
11 procedure, medication, therapeutic intervention, or  
12 other health care; and

13 (3) Direction to provide, withhold, or withdraw artificial  
14 nutrition or hydration, mechanical ventilation, or  
15 other health care.

16 "Health care institution" means a facility or agency  
17 licensed, certified, or otherwise authorized or permitted by  
18 other law to provide health care in this State in the ordinary  
19 course of business.

20 "Health care instruction" means a direction, whether or not  
21 in a record, made by an individual that indicates the  
22 individual's goals, preferences, or wishes concerning the

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1 provision, withholding, or withdrawal of health care. "Health  
2 care instruction" includes a direction intended to be effective  
3 if a specified condition arises.

4 "Health care professional" means a physician or other  
5 individual licensed, certified, or otherwise authorized or  
6 permitted by other laws of this State to provide health care in  
7 this State in the ordinary course of business or the practice of  
8 the physician's or individual's profession.

9 "Individual" means an adult or emancipated minor.

10 "Mental health care" means care or treatment or a service  
11 or procedure to maintain, monitor, diagnose, or otherwise affect  
12 an individual's mental illness or other psychiatric,  
13 psychological, or psychosocial condition.

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

15 "Nursing home" means a nursing facility as defined in  
16 section 1919(a)(1) of the Social Security Act (42 U.S.C.  
17 1396r(a)(1)), or skilled nursing facility as defined in section  
18 1819(a)(1) of the Social Security Act (42 U.S.C. 1395i-3(a)(1)).

19 "Person" means an individual, estate, business or nonprofit  
20 entity, government or governmental subdivision, agency, or  
21 instrumentality, or other legal entity.

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

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

13 "Physician" means an individual licensed to practice  
14 medicine or osteopathic medicine under chapter 453.

15 "Psychologist" means an individual licensed to practice  
16 psychology under chapter 465.

17 "Power of attorney for health care" means a record in which  
18 an individual appoints an agent to make health care decisions  
19 for the individual.

20 "Reasonably available" means being able to be contacted  
21 without undue effort and being willing and able to act in a  
22 timely manner considering the urgency of an individual's health

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1 care situation. When used to refer to an agent or default  
2 surrogate, "reasonably available" includes being willing and  
3 able to comply with the duties under section -17 in a timely  
4 manner considering the urgency of an individual's health care  
5 situation.

6 "Record" means information:

- 7 (1) Inscribed on a tangible medium; or  
8 (2) Stored in an electronic or other medium and  
9 retrievable in perceivable form.

10 "Responsible health care professional" means:

- 11 (1) A health care professional designated by an individual  
12 or the individual's surrogate to have primary  
13 responsibility for the individual's health care or for  
14 overseeing a course of treatment; or  
15 (2) In the absence of a designation under paragraph (1)  
16 or, if the health care professional designated under  
17 paragraph (1) is not reasonably available, a health  
18 care professional who has primary responsibility for  
19 overseeing the individual's health care or for  
20 overseeing a course of treatment.

21 "Sign" means, with present intent to authenticate or adopt  
22 a record:



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

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

4 "State" means a state of the United States, the District of  
5 Columbia, Puerto Rico, the United States Virgin Islands, or any  
6 other territory or possession subject to the jurisdiction of the  
7 United States. "State" includes a federally recognized Indian  
8 tribe.

9 "Supported decision making" means assistance, from one or  
10 more persons of an individual's choosing, that helps the  
11 individual make or communicate a decision, including by helping  
12 the individual understand the nature and consequences of the  
13 decision. "Supported decision making" includes, but is not  
14 limited to, assistance from an individual's supportive community  
15 pursuant to chapter 349F.

16 "Surrogate" means:

17 (1) An agent;

18 (2) A default surrogate; or

19 (3) A guardian authorized to make health care decisions.

20 **§ -3 Capacity.** (a) An individual shall be deemed to  
21 have capacity for the purpose of this chapter if the individual:

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- 1           (1) Is willing and able to communicate a decision  
2           independently or with appropriate services,  
3           technological assistance, supported decision making,  
4           or other reasonable accommodation; and
- 5           (2) In making or revoking:
- 6                (A) A health care decision, understands the nature  
7                and consequences of the decision, including the  
8                primary risks and benefits of the decision;
- 9                (B) A health care instruction, understands the nature  
10              and consequences of the instruction, including  
11              the primary risks and benefits of the choices  
12              expressed in the instruction; and
- 13              (C) An appointment of an agent under a power of  
14              attorney for health care or identification of a  
15              default surrogate under section     -12(b),  
16              recognizes the identity of the person being  
17              appointed or identified and understands the  
18              general nature of the relationship of the  
19              individual making the appointment or  
20              identification with the person being appointed or  
21              identified.

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

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

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

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

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

(b) A presumption under subsection (a) may be rebutted by a finding that the individual lacks capacity:

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

(A) A physician;

(B) A psychologist; or

(C) An advanced practice registered nurse;

(2) Made in accordance with accepted standards of the profession and the scope of practice of the health

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1 care professional making the finding and to a

2 reasonable degree of certainty; and

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

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

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

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

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

14 (d) If the finding under subsection (b) was based on a  
15 condition the individual no longer has or a responsible health  
16 care professional subsequently has good cause to believe the  
17 individual has capacity, the individual shall be presumed to  
18 have capacity unless a court finds the individual lacks capacity  
19 pursuant to section -6 or the presumption is rebutted under  
20 subsection (b).

21 **§ -5 Notice of finding of lack of capacity.** (a) As  
22 soon as reasonably feasible, a health care professional who

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1 makes a finding under section -4(b) shall inform the  
2 individual who is the subject of the finding or the individual's  
3 responsible health care professional of the finding.

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

### 8 § -6 Judicial review of finding of lack of capacity.

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

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

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1       **§ -7 Health care instruction.** (a) An individual may  
2 create a health care instruction that expresses the individual's  
3 preferences for future health care, including preferences  
4 regarding:

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

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

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

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

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

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

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

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

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

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

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

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

11          (2) Is not:

12           (A) The agent appointed by the individual;

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

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

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



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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.

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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

22           (E) Preferences regarding crisis intervention.

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

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

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

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- 1           (B) The agent's spouse, civil union partner, or  
2           cohabitant;
- 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;
- 7           (D) Related to the individual by blood, marriage, or  
8           adoption; or
- 9           (E) Entitled to any portion of the estate upon the  
10          individual's death; and
- 11        (3) Are physically present in the same location as the  
12          individual.

### 13        §   -10   Relationship of advance mental health care

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

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

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

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

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

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

21           (b) Upon determination that an individual lacks capacity  
22 to make health care decisions, a responsible health care

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

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

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

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

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

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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 before the  
14 individual became 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  
21 and is familiar with the individual's personal values;



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1           (6) An affirmation that the person understands that the  
2           health care professional will reasonably rely on the  
3           person's representations in the declaration to assist  
4           in providing medical treatment; and

5           (7) A statement that the declaration was provided under  
6           the penalty of law.

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 responsible health care professional may  
12          request interested persons 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  
22          disqualify a person from acting as default surrogate for the

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

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

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

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

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

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

13       (A) A petition for annulment, divorce, or dissolution  
14       of marriage, legal separation, or termination has  
15       been filed and not dismissed or withdrawn;

16       (B) A decree of annulment, divorce, or dissolution of  
17       marriage, legal separation, or termination has  
18       been issued;

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

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

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

9           **§ -14 Revocation.** (a) An individual may revoke the  
10 appointment of an agent, the designation of a default surrogate,  
11 or a health care instruction in whole or in part, unless:

- 12           (1) A court finds the individual lacks capacity to do so;  
13           (2) The individual is found under section       -4(b) to lack  
14                           capacity to do so; or  
15           (3) The individual created an advance mental health care  
16                           directive that includes the provision under  
17                           section       -9(d) and the individual is experiencing  
18                           the psychiatric or psychological event specified in  
19                           the directive.

20           (b) Revocation under subsection (a) may be by any act of  
21 the individual that clearly indicates that the individual

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1   revokes the appointment, designation, or instruction, including  
2   an oral statement to a health care professional.

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

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

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

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

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

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

20           §   -15   **Withdrawal of agent.**   An agent may withdraw by  
21   giving notice to the individual for whom the agent is acting, if  
22   the individual has capacity at the time.   If the individual is

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1 found under section -4(b) or by a court to lack capacity, the  
2 agent may withdraw by giving notice to a responsible health care  
3 professional.

4 **§ -16 Validity of advance health care directive;**

5 **conflict with other law.** (a) An advance health care directive  
6 created outside this State shall be valid if it complies with:

7 (1) The law of the state specified in the directive or, if  
8 a state is not specified, the state in which the  
9 individual created the directive; or

10 (2) This chapter.

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

15 (c) An advance health care directive, revocation of a  
16 directive, or a signature on a directive or revocation shall not  
17 be denied legal effect or enforceability solely because it is in  
18 electronic form.

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

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

3           (f) If this chapter conflicts with other laws of this  
4 State relating to the creation, execution, implementation, or  
5 revocation of an advance health care directive, this chapter  
6 shall prevail.

7           **§ -17 Duties of agent and default surrogate.** (a) An  
8 agent or default surrogate shall have a fiduciary duty to the  
9 individual for whom the agent or default surrogate is acting  
10 when exercising or purporting to exercise a power under  
11 section -18.

12           (b) An agent or a default surrogate shall make a health  
13 care decision in accordance with the direction of the individual  
14 in an advance health care directive and other goals,  
15 preferences, and wishes of the individual to the extent known or  
16 reasonably ascertainable by the agent or default surrogate.

17           (c) If there is not a direction in an advance health care  
18 directive and the goals, preferences, and wishes of the  
19 individual regarding a health care decision are not known or  
20 reasonably ascertainable by the agent or default surrogate, the  
21 agent or default surrogate shall make the decision in accordance

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1 with the agent's or default surrogate's determination of the  
2 individual's best interest.

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

5 (1) Give primary consideration to the individual's  
6 contemporaneous communications, including verbal and  
7 nonverbal expressions;

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

11 (3) Consider the risks and benefits of the potential  
12 health care decision.

13 (e) As soon as reasonably feasible, an agent or a default  
14 surrogate who is informed of a revocation of an advance health  
15 care directive or disqualification of the agent or default  
16 surrogate shall communicate the revocation or disqualification  
17 to a responsible health care professional.

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

19 Except as provided in subsection (c), the power of an agent or a  
20 default surrogate shall commence when the individual is found  
21 under section -4(b) or by a court to lack capacity to make a



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1 health care decision. The power shall cease if the individual  
2 is later found to have capacity to make a health care decision.

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

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

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

17 A default surrogate may act as a medicaid authorized  
18 representative, pursuant to federal and state medicaid laws  
19 relating to authorized representatives, on the individual's  
20 behalf for the purposes of medicaid, including assisting with,  
21 submitting, and executing a medicaid application,  
22 redetermination of eligibility, or other ongoing

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

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

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

- 19       (1) Voluntary admission is specifically authorized by the  
20           individual in an advance health care directive in a  
21           record; and

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

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

(1) An alternative living arrangement is reasonably feasible;

(2) The individual objects to the placement; or

(3) The individual is not terminally ill.

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

**§ -19 Limitation on powers.** If an individual has a long-term disability requiring routine treatment by artificial nutrition, hydration, or mechanical ventilation and a history of

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1 using the treatment without objection, an agent or default  
2 surrogate shall not consent to withhold or withdraw the  
3 treatment unless:

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

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

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

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

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

19 § -20 **Co-agents; alternate agent.** (a) An individual  
20 may appoint multiple individuals as co-agents in a power of  
21 attorney for health care. Unless the power of attorney for

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1 health care provides otherwise, each co-agent may exercise  
2 independent authority.

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

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

11 (1) At any time the original agent is not reasonably  
12 available or is otherwise unwilling or unable to act,  
13 for the duration of the unavailability, unwillingness,  
14 or inability to act; or

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

18 **§ -21 Duties of health care professional, responsible**  
19 **health care professional, and health care institution.** (a) A  
20 responsible health care professional who is aware that an  
21 individual has been found under section -4(b) or by a court  
22 to lack capacity to make a health care decision shall make a

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1 reasonable effort to determine if the individual has a  
2 surrogate.

3 (b) If possible before implementing a health care decision  
4 made by a surrogate, a responsible health care professional as  
5 soon as reasonably feasible shall communicate to the individual  
6 the decision made and the identity of the surrogate.

7 (c) A responsible health care professional who makes or is  
8 informed of a finding that an individual lacks capacity to make  
9 a health care decision or no longer lacks capacity, or that  
10 other circumstances exist that affect a health care instruction  
11 or the authority of a surrogate, as soon as reasonably feasible,  
12 shall:

13 (1) Document the finding or circumstance in the  
14 individual's medical record; and

15 (2) If possible, communicate the finding or circumstance  
16 to the individual and the individual's surrogate.

17 (d) A responsible health care professional who is informed  
18 that an individual has created or revoked an advance health care  
19 directive, or that a surrogate for an individual has been  
20 appointed, designated, or disqualified, or has withdrawn, shall:

21 (1) Document the information as soon as reasonably  
22 feasible in the individual's medical record; and

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1           (2) If evidence of the directive, revocation, appointment,  
2           designation, disqualification, or withdrawal is in a  
3           record, request a copy and, on receipt, cause the copy  
4           to be included in the individual's medical record.

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

8           (1) A health care instruction given by the individual  
9           regarding the individual's health care;

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

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

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

21          (1) The instruction or decision is contrary to a policy of  
22 the health care institution providing care to the

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individual and the policy was timely communicated to the individual with capacity or to the individual's surrogate;

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

(3) Compliance with the instruction or decision would:

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

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

(C) Violate a court order or other law.

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



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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

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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;
- 20 (5) Determining that a person who otherwise might be  
21 authorized to act as an agent or default surrogate is  
22 not reasonably available; or

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

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

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

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

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

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

(B) Intentionally withhold knowledge of the existence  
or revocation of the directive from a responsible

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1 health care professional or health care  
2 institution providing health care to the  
3 individual who created or revoked the directive;  
4 (3) Coerce or fraudulently induce an individual to create,  
5 revoke, or refrain from creating or revoking an  
6 advance health care directive or a part of a  
7 directive; or  
8 (4) Require or prohibit the creation or revocation of an  
9 advance health care directive as a condition for  
10 providing health care.  
11 (b) An individual who is the subject of conduct prohibited  
12 under subsection (a), or the individual's estate, shall have a  
13 cause of action against a person that violates subsection (a)  
14 for statutory damages of \$25,000 or actual damages resulting  
15 from the violation, whichever is greater.  
16 (c) Subject to subsection (d), an individual who makes a  
17 health care instruction, or the individual's estate, shall have  
18 a cause of action against a health care professional or health  
19 care institution that intentionally violates section -21 for  
20 statutory damages of \$5,000 or actual damages resulting from the  
21 violation, whichever is greater.

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

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

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

12 (3) The provision of care does not begin in a health care  
13 institution in which the individual resides or was  
14 receiving care.

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

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

20 **§ -25 Effect of copy; certified physical copy.** (a) A  
21 physical or electronic copy of an advance health care directive,  
22 revocation of an advance health care directive, or appointment,

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1 designation, or disqualification of a surrogate shall have the  
2 same effect as the original.

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

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

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

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

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

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- 1 (B) Is unwilling or unable to comply with  
2 section -17; or  
3 (C) Poses a danger to the individual's well-being;
- 4 (3) Enjoin another person from acting as a default  
5 surrogate, on a finding that the other person acting  
6 as a default surrogate did not comply with  
7 section -12 or the other person:
- 8 (A) Is disqualified under section -13;  
9 (B) Is unwilling or unable to comply with  
10 section -17; or  
11 (C) Poses a danger to the well-being of the  
12 individual for whom the person is acting as a  
13 default surrogate; or
- 14 (4) Order the implementation of a health care decision  
15 made:
- 16 (A) By and for the individual; or  
17 (B) By an agent or default surrogate who is acting in  
18 compliance with the powers and duties of the  
19 agent or default surrogate.
- 20 (b) In this chapter, advocacy for the withholding or  
21 withdrawal of health care or mental health care from an  
22 individual shall not by itself be evidence that an agent or

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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 laws 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.



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

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

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

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

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

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

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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."

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

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

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

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

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

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

14          "**§321-23.6 Rapid identification documents.** (a) The  
15          department shall adopt rules for emergency medical services that  
16          shall include:

17          (1) Uniform methods of rapidly identifying an [~~adult~~  
18          ~~person~~] individual who is an adult or emancipated  
19          minor who has certified, or for whom has been  
20          certified, in a written "comfort care only" document  
21          that the [~~person~~] individual or[, ~~consistent with~~  
22          ~~chapter 327E, the person's guardian, agent, or~~] the

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

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

17       (3) The original or copy of the document, which may be in  
18       an electronic form, containing the certification and  
19       all three signatures shall be maintained by the  
20       [~~patient,~~] individual, and if applicable, the  
21       [~~patient's:~~] individual's:

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

(B) Attorney;

~~[(C) Guardian;~~

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

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

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

(b) The rules shall provide for the following:

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

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

(3) If an emergency medical services ~~[person]~~ personnel, first responder~~[,]~~ personnel, or any other health care ~~[provider]~~ professional believes in good faith that the ~~[provider's]~~ professional's safety, the safety of

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1           the family or immediate bystanders, or the  
2           ~~[provider's]~~ professional's own conscience requires  
3           the ~~[patient]~~ individual be resuscitated despite the  
4           presence of a "comfort care only" document, then that  
5           ~~[provider]~~ professional may attempt to resuscitate  
6           that ~~[patient,~~ individual, and neither the ~~[provider,~~  
7           ~~the ambulance service,~~ professional, the emergency  
8           medical services, nor any other person or entity shall  
9           be liable for attempting to resuscitate the ~~[patient]~~  
10          individual against the ~~[patient's will.]~~ individual's  
11          certification.

12          (c) For the purposes of this section:

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

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

17          "Health care professional" has the same meaning as defined  
18          in section       -2.

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

21          "Surrogate" has the same meaning as defined in  
22          section       -2."

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

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

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

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

- (1) A pharmacist licensed under chapter 461;
- (2) A physician as defined in section ~~[327E-2]~~ \_\_\_\_\_ -2;
- (3) A health care ~~[provider]~~ professional as defined in section ~~[327E-2]~~ \_\_\_\_\_ -2; or
- (4) An authorized agent of a pharmacy, as defined in section 461-1, or of a health care institution, as

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1           defined in section [~~327E-2,~~       -2, operating under  
2           the direction of a licensed pharmacist or physician."

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

5           "~~[§]~~**\$327-21**~~[§]~~   **Effect of anatomical gift on advance**  
6 ~~[health-care]~~ **health care directive.**   (a) If a prospective  
7 donor has a declaration or advance ~~[health-care]~~ health care  
8 directive, and the terms of the declaration or directive and the  
9 express or implied terms of a potential anatomical gift are in  
10 conflict with regard to the administration of measures necessary  
11 to ensure the medical suitability of a body part for  
12 transplantation or therapy, the prospective donor's attending  
13 physician and prospective donor shall confer to resolve the  
14 conflict. If the prospective donor is incapable of resolving  
15 the conflict, an agent acting under the prospective donor's  
16 declaration or directive, or, if none or if the agent is not  
17 reasonably available, another person authorized by law other  
18 than this chapter to make ~~[health-care]~~ health care decisions on  
19 behalf of the prospective donor, shall act for the donor to  
20 resolve the conflict. The conflict shall be resolved as  
21 expeditiously as possible. Information relevant to the  
22 resolution of the conflict may be obtained from the appropriate



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1 procurement organization and any other person authorized to make  
2 an anatomical gift for the prospective donor under section  
3 327-9. Before resolution of the conflict, measures necessary to  
4 ensure the medical suitability of the body part may not be  
5 withheld or withdrawn from the prospective donor if withholding  
6 or withdrawing the measures is not contraindicated by  
7 appropriate end-of-life care.

8 (b) As used in this section:

9 ~~["Advance health care directive" means a record signed or~~  
10 ~~authorized by a prospective donor containing the prospective~~  
11 ~~donor's direction concerning a health care decision for the~~  
12 ~~prospective donor or a power of attorney for health care.]~~

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

15 "Declaration" means a record signed by a prospective donor  
16 specifying the circumstances under which a life support system  
17 may be withheld or withdrawn.

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

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

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

3           ""Legally authorized representative" means an agent,  
4 guardian, or surrogate, as those terms are defined in section  
5 [~~327E-2~~]      -2     , or agent designated through a power of attorney  
6 for health care, as defined in section [~~327E-2~~]      -2     ."

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

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

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

19           "(c) The provider shall discuss with the enrollee and the  
20 enrollee's immediate family both [~~+~~]advance[~~+~~ ~~health-care~~]  
21 health care directives, as provided for in [~~chapter 327E, and~~

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~~1 durable powers of attorney in relation to medical treatment.]~~

~~2 chapter \_\_\_\_\_."~~

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

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

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

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

15 (A) Spouse or reciprocal beneficiary, or if the  
16 respondent has none, an adult with whom the  
17 respondent has resided for more than six months  
18 before the filing of the petition; and

19 (B) Adult children or, if the respondent has none,  
20 the respondent's parents and adult siblings, or  
21 if the respondent has none, at least one of the

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

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1           (9) If an unlimited guardianship is requested, the reason  
2           why limited guardianship is inappropriate and, if a  
3           limited guardianship is requested, the powers to be  
4           granted to the limited guardian; and

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

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

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

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

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

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

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1           respondent had sufficient capacity to express a  
2           preference;

3           (3) An agent appointed by the respondent under any  
4           ~~[medical]~~ advance health care directive or health care  
5           power of attorney or, if none, any ~~[designated]~~  
6           default surrogate under section ~~[327E-5(f);]~~ -12;

7           (4) The spouse or reciprocal beneficiary of the respondent  
8           or a person nominated by will or other signed writing  
9           of a deceased spouse or reciprocal beneficiary;

10          (5) An adult child of the respondent;

11          (6) A parent of the respondent, or an individual nominated  
12          by will or other signed writing of a parent; and

13          (7) An adult with whom the respondent has resided for more  
14          than six months before the filing of the petition."

15          2. By amending subsection (c) to read:

16          "(c) An owner, operator, ~~[or]~~ employee, or contractor of a  
17          long-term care institution or other care settings at which the  
18          respondent is receiving care ~~[may]~~ shall not be appointed as  
19          guardian unless ~~[related to the respondent by blood, marriage,~~  
20          ~~or adoption,]~~ the owner, operator, employee, or contractor is a  
21          family member of the respondent, the cohabitant of the  
22          respondent or a family member of the cohabitant, or otherwise

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1 ordered by the court. As used in this subsection, "cohabitant"  
2 and "family member" have the same meanings as defined in section  
3 -2."

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

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

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

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

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

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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.

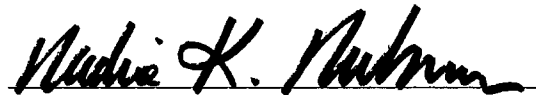
14 SECTION 17. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 18. This Act, upon its approval, shall take effect  
17 on July 1, 2027.

18

19

INTRODUCED BY:



20

BY REQUEST

JAN 26 2026



# H.B. NO. 2257

**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.

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

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO HEALTH CARE.

PURPOSE: To update laws concerning advance health-care directives and advance mental health-care directives by adopting the Uniform Health-Care Decisions Act (2023) in amended form.

MEANS: Add a new chapter to the Hawaii Revised Statutes (HRS). Amend sections 286-109.4, 286-303(d) and (g), 321-23.6, 323G-3, 325-21(a), 327-21, 327K-1, 432E-4(c), 560:5-304(b), 560:5-310(a) and (c), 560:5-316(c) and (d), and 671-3(e), HRS. Repeal chapters 327E and 327G.

JUSTIFICATION: In 2023, the Uniform Law Commission approved and recommended for enactment in all states the Uniform Health-Care Decisions Act (2023). While existing Hawaii laws address advance directives broadly, the Uniform Health-Care Decisions Act (2023) does so more comprehensively by dividing various types of advance directives into separate sections for power of attorney for health care, health-care instructions, and advance mental health-care directives.

Among other things, the 2023 Uniform Health-Care Decisions Act expands upon the framework for determining whether an individual has capacity, removes legal hurdles for creating advance directives, addresses both advance health-care directives and advance mental health-care directives within the same statutory framework, and allows an individual to assent to a "Ulysses clause" in an advance mental health-care directive, which allows an individual to include an instruction that prevents the individual from revoking the advance directive if the individual is

experiencing a psychiatric or psychological event specified in the directive.

Impact on the public: The bill simplifies the process to execute an advance health-care directive.

Impact on the department and other agencies: The Department of Health, in consultation with the Department, will be required to develop model forms of advance health-care directives and advance mental health-care directives.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: Judiciary; Department of Health; County  
Emergency Medical Services.

EFFECTIVE DATE: July 1, 2027.