

JAN 28 2026

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:

"CHAPTER

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

5 **§ -4 Presumption of capacity; overcoming presumption.**

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

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

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

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

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

17 (A) A physician;

18 (B) A psychologist; or

19 (C) An advanced practice registered nurse;

20 (2) Made in accordance with accepted standards of the
21 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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1 (2) The admission is for not more than the maximum of the
2 number of days specified in the directive or thirty
3 days, whichever is less.

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

10 (1) An alternative living arrangement is reasonably
11 feasible;

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

13 (3) The individual is not terminally ill.

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

20 § -19 **Limitation on powers.** If an individual has a
21 long-term disability requiring routine treatment by artificial
22 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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1 individual and the policy was timely communicated to
2 the individual with capacity or to the individual's
3 surrogate;

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

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

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

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

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

20 (g) A health care professional or health care institution
21 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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1 (6) Complying with an individual's direction under
2 section -9(d).

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

9 § -24 **Prohibited conduct; damages.** (a) A person shall
10 not:

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

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

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

21 (B) Intentionally withhold knowledge of the existence
22 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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(d) An emergency department of a health care institution or health care professional who is an emergency medical services personnel or first responder personnel shall not be liable under subsection (c) for a violation of section -21(e) if:

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

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

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

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

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

§ -25 Effect of copy; certified physical copy. (a) A physical or electronic copy of an advance health care directive, 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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(B) Is unwilling or unable to comply with

section -17; or

(C) Poses a danger to the individual's well-being;

(3) Enjoin another person from acting as a default

surrogate, on a finding that the other person acting

as a default surrogate did not comply with

section -12 or the other person:

(A) Is disqualified under section -13;

(B) Is unwilling or unable to comply with

section -17; or

(C) Poses a danger to the well-being of the

individual for whom the person is acting as a

default surrogate; or

(4) Order the implementation of a health care decision

made:

(A) By and for the individual; or

(B) By an agent or default surrogate who is acting in

compliance with the powers and duties of the

agent or default surrogate.

(b) In this chapter, advocacy for the withholding or
withdrawal of health care or mental health care from an
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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1 (d) Nothing in this chapter shall create a presumption
2 concerning the intention of an individual who has not created an
3 advance health care directive.

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

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

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

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

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

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

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

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

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

- 17 (1) A pharmacist licensed under chapter 461;
18 (2) A physician as defined in section ~~[327E-2]~~ ____-2;
19 (3) A health care ~~[provider]~~ professional as defined in
20 section ~~[327E-2]~~ ____-2; or
21 (4) An authorized agent of a pharmacy, as defined in
22 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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(9) If an unlimited guardianship is requested, the reason why limited guardianship is inappropriate and, if a limited guardianship is requested, the powers to be granted to the limited guardian; and

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

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

1. By amending subsection (a) to read:

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

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

(2) A person nominated as guardian by the respondent, including the respondent's most recent nomination made in a durable power of attorney[7] or advance health 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."

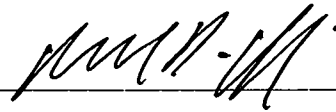
10 SECTION 15. Chapter 327E, Hawaii Revised Statutes, is
11 repealed.

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

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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.