
A BILL FOR AN ACT

RELATING TO HEALTH CARE.

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

1 PART I

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

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



HEALTH CARE DECISIONS

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

§ -2 **Definitions.** As used in this chapter:

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

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

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

"Agent" means an individual appointed under a power of attorney for health care to make a health care decision for the individual who made the appointment.

"Capacity" means having capacity under section -3.

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



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

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

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

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

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

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

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

20 "Guardian" means a person appointed under chapter 560,
21 article V, part 3, by a court to make decisions regarding the



1 personal affairs of an individual, which may include health care
2 decisions. "Guardian" does not include a guardian ad litem.

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

6 "Health care" includes mental health care.

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

- 10 (1) Selection or discharge of a health care professional
11 or health care institution;
- 12 (2) Approval or disapproval of a diagnostic test, surgical
13 procedure, medication, therapeutic intervention, or
14 other health care; and
- 15 (3) Direction to provide, withhold, or withdraw artificial
16 nutrition or hydration, mechanical ventilation, or
17 other health care.

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



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

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

12 "Individual" means an adult or emancipated minor.

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

17 "Minor" means an individual under eighteen years of age.

18 "Nursing home" means a nursing facility as defined in
19 section 1919(a)(1) of the Social Security Act (42 U.S.C.
20 1396r(a)(1)), or skilled nursing facility as defined in section
21 1819(a)(1) of the Social Security Act (42 U.S.C. 1395i-3(a)(1)).



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

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

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

17 "Physician" means an individual licensed to practice
18 medicine or osteopathic medicine under chapter 453.

19 "Psychologist" means an individual licensed to practice
20 psychology under chapter 465.



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

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

12 "Record" means information:

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

16 "Responsible health care professional" means:

- 17 (1) A health care professional designated by an individual
18 or the individual's surrogate to have primary
19 responsibility for the individual's health care or for
20 overseeing a course of treatment; or



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

7 "Sign" means, with present intent to authenticate or adopt
8 a record, to:

- 9 (1) Execute or adopt a tangible symbol; or
10 (2) Attach to or logically associate with the record an
11 electronic symbol, sound, or process.

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

17 "Supported decision-making" means assistance, from one or
18 more persons of an individual's choosing, that helps the
19 individual make or communicate a decision, including by helping
20 the individual understand the nature and consequences of the
21 decision. "Supported decision-making" includes but is not



1 limited to assistance from an individual's supportive community
2 pursuant to chapter 349F.

3 "Surrogate" means:

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

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

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



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

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

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

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

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

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



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

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

6 (A) A physician;

7 (B) A psychologist; or

8 (C) An advanced practice registered nurse;

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

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

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

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

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



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

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

10 § -5 **Notice of finding of lack of capacity.** (a) As
11 soon as reasonably feasible, a health care professional who
12 makes a finding under section -4(b) shall inform the
13 individual who is the subject of the finding or the individual's
14 responsible health care professional of the finding.

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

19 § -6 **Judicial review of finding of lack of capacity.**

20 (a) An individual found under section -4(b) to lack
21 capacity, a responsible health care professional, the health



1 care institution providing health care to the individual, or a
2 person interested in the welfare of the individual may petition
3 the family court in the county where the individual resides or
4 is located to determine whether the individual lacks capacity.

5 (b) The court in which a petition under subsection (a) is
6 filed may appoint a guardian ad litem. The court shall hear the
7 petition as soon as practicable after the petition is filed. As
8 soon as practicable after the hearing, the court shall determine
9 whether the individual lacks capacity. The court may determine
10 that the individual lacks capacity only if the court finds by
11 clear and convincing evidence that the individual lacks
12 capacity.

13 § -7 **Health care instruction.** (a) An individual may
14 create a health care instruction that expresses the individual's
15 preferences for future health care, including preferences
16 regarding:

- 17 (1) Health care professionals or health care institutions;
18 (2) How a health care decision will be made and
19 communicated;
20 (3) Persons that should or should not be consulted
21 regarding a health care decision;



1 (4) A person to serve as guardian for the individual, if
2 one is appointed; and

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

4 (b) A health care professional to whom an individual
5 communicates or provides an instruction under subsection (a)
6 shall document and maintain the instruction and the date of the
7 instruction in the individual's medical record or communicate
8 the instruction and date of the instruction to an administrator
9 with responsibility for medical records of the health care
10 institution providing health care to the individual, who shall
11 document and maintain the instruction and the date of the
12 instruction in the individual's medical record.

13 (c) A health care instruction made by an individual that
14 conflicts with an earlier health care instruction made by the
15 individual, including an instruction documented in a medical
16 order, shall revoke the earlier instruction to the extent of the
17 conflict.

18 (d) A health care instruction, whether oral or written,
19 shall not revoke, suspend, or otherwise invalidate an advance
20 health care directive unless the individual expressly states an
21 intent to revoke or modify, in whole or in part, the advance



1 health care directive and is determined to have capacity to make
2 health care decisions as described in this section at the time
3 the revocation or modification is made.

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

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

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

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

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



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

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

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

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

10 (2) Is not:

11 (A) The agent appointed by the individual;

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

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

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



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

3 (3) Is present when the individual signs the power of
4 attorney or when the individual represents that the
5 power of attorney reflects the individual's wishes.

6 (e) A witness under subsection (d) shall be considered
7 present if the witness and the individual are:

8 (1) Physically present in the same location;

9 (2) Using electronic means that allow for real time audio
10 and visual transmission and communication in real time
11 to the same extent as if the witness and the
12 individual were physically present in the same
13 location; or

14 (3) Able to speak to and hear each other in real time
15 through audio connection if:

16 (A) The identity of the individual is personally
17 known to the witness; or

18 (B) The witness is able to authenticate the identity
19 of the individual by receiving accurate answers
20 from the individual that enable the
21 authentication.



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

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

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

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

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

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

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

19 (C) Preferences regarding medications;

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



1 (E) Preferences regarding crisis intervention.

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

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

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

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

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

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

21 (2) Are not:



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

14 **§ -10 Relationship of advance mental health care**
15 **directive and another advance health care directive.** (a) If a
16 direction in an advance mental health care directive of an
17 individual conflicts with a direction in another advance health
18 care directive of the individual, the later direction shall
19 control and revoke the earlier direction to the extent of the
20 conflict; provided that the existence of a conflict shall be
21 determined based on the specific health care decision at issue,



1 rather than on whether the individual's condition is
2 characterized as mental or physical.

3 (b) An agent appointed to make health care decisions other
4 than mental health care decisions shall have authority over all
5 other health care decisions, including decisions relating to
6 medical or surgical treatment, palliative care, life-sustaining
7 treatment, and care for physical conditions, even when the
8 conditions are comorbid with a mental or behavioral health
9 condition.

10 (c) An agent appointed to make decisions only for mental
11 health care shall have authority over decisions primarily
12 relating to the diagnosis, treatment, or management of a mental
13 or behavioral health condition, including decisions regarding
14 psychiatric treatment and admission to or discharge from a
15 mental health facility, to the extent authorized by the advance
16 mental health care directive.

17 (d) When a proposed course of treatment addresses both
18 mental and physical health aspects, the agents shall, to the
19 extent practicable, consult with one another. If the agents
20 disagree, authority shall be determined by the primary purpose



1 of the specific decision at issue, as determined by the
2 attending health care provider acting in good faith.

3 (e) A health care provider who relies in good faith on a
4 determination under subsection (b) or (c) shall not be subject
5 to civil or criminal liability or discipline for unprofessional
6 conduct for acting in accordance with that determination.

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

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

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



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

6 (c) If the individual has not appointed an agent, lacks
7 capacity to identify a default surrogate, and there are no
8 instructions on identifying a default surrogate, the responsible
9 health care professional or the responsible health care
10 professional's designee shall make reasonable efforts to locate
11 as many interested persons as practicable, and the responsible
12 health care professional or the responsible health care
13 professional's designee may rely on the interested persons to
14 notify other family members or interested persons. Upon
15 locating interested persons, the responsible health care
16 professional or the responsible health care professional's
17 designee shall inform the interested persons of the individual's
18 lack of capacity and that a default surrogate should be selected
19 for the individual.

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



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

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

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



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

- 7 (1) The name of the person who seeks to assume the
8 authority to act as a default surrogate;
- 9 (2) An affirmation that the person understands that the
10 statements and affirmations are made under the penalty
11 of law;
- 12 (3) An affirmation that the person had a relationship with
13 the individual who lacks capacity 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;



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 health care; 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) For the purposes of this section, "interested persons"
16 means any of the individual's family members or any adult who
17 has exhibited special care and concern for the individual and
18 who is familiar with the individual's personal values.

19 **§ -13 Disqualification to act as default surrogate.** (a)
20 An individual for whom a health care decision would be made may
21 disqualify a person from acting as default surrogate for the



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 only
10 if made by an individual who retains capacity under
11 section -3(a)(1) and (2)(C).

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

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

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



1 residing or receiving care unless the owner, operator,
2 employee, or contractor is a family member of the
3 individual, the cohabitant of the individual, or a
4 family member of the cohabitant; or

5 (3) The potential default surrogate refuses to provide a
6 timely declaration under section -12(f) upon the
7 request by a responsible health care professional.

8 § **-14 Revocation.** (a) An individual may revoke the
9 appointment of an agent, the designation of a default surrogate,
10 or a health care instruction, in whole or in part, unless:

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

12 (2) The individual is found under section -4(b) to lack
13 capacity to do so; or

14 (3) The individual created an advance mental health care
15 directive that includes the provision under
16 section -9(d) and the individual is experiencing
17 the psychiatric or psychological event specified in
18 the directive.

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



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, or dissolution of
12 marriage, legal separation, or termination has been
13 filed and not dismissed or withdrawn;

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

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

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



1 § **-15 Withdrawal of agent.** An agent may withdraw by
2 giving notice to the individual for whom the agent is acting if
3 the individual has capacity at the time. If the individual is
4 found under section -4(b) or by a court to lack capacity, the
5 agent may withdraw by giving notice to a responsible health care
6 professional.

7 § **-16 Validity of advance health care directive;**
8 **conflict with other law.** (a) An advance health care directive
9 created outside this State shall be valid if it complies with:

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

13 (2) This chapter.

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

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



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

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

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

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

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



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

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

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

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

16 (3) Consider the risks and benefits of the potential
17 health care decision.

18 (e) As soon as reasonably feasible, an agent or a default
19 surrogate who is informed of a revocation of an advance health
20 care directive or disqualification of the agent or default



1 surrogate shall communicate the revocation or disqualification
2 to a responsible health care professional.

3 § -18 **Powers of agent and default surrogate.** (a)

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

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

14 (c) A power of attorney for health care may provide that
15 the power of an agent under subsection (b) commences on
16 appointment.

17 (d) If no other person is authorized to do so, an agent or
18 a default surrogate may apply for private health insurance and
19 benefits on behalf of the individual. An agent or a default
20 surrogate who may apply for insurance and benefits shall not,



1 solely by reason of the power, have a duty to apply for the
2 insurance or benefits.

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

19 The agent or default surrogate's status as an authorized
20 representative for the purposes of medicaid shall terminate when
21 revoked by an individual who no longer lacks capacity, upon



1 appointment or availability of another agent or guardian, or
2 upon the individual's death.

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

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

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

12 § -19 **Limitation on powers.** If an individual has a
13 long-term disability requiring routine treatment by artificial
14 nutrition, hydration, or mechanical ventilation and a history of
15 using the treatment without objection, an agent or default
16 surrogate shall not consent to withhold or withdraw the
17 treatment unless:

18 (1) The treatment is not necessary to sustain the
19 individual's life or maintain the individual's
20 well-being;



- 1 (2) The individual has expressly authorized the
2 withholding or withdrawal in a health care instruction
3 that has not been revoked; or
- 4 (3) The individual has experienced a major reduction in
5 health or functional ability from which the individual
6 is not expected to recover, even with other
7 appropriate treatment, and the individual has not:
- 8 (A) Given a direction inconsistent with withholding
9 or withdrawal; or
- 10 (B) Communicated by verbal or nonverbal expression a
11 desire for artificial nutrition, hydration, or
12 mechanical ventilation.

13 § -20 **Duties of health care professional, responsible**
14 **health care professional, and health care institution.** (a) A
15 responsible health care professional who is aware that an
16 individual has been found under section -4(b) or by a court
17 to lack capacity to make a health care decision shall make a
18 reasonable effort to determine if the individual has a
19 surrogate.

20 (b) If possible, before implementing a health care
21 decision made by a surrogate, a responsible health care



1 professional as soon as reasonably feasible shall communicate to
2 the individual the decision made and the identity of the
3 surrogate.

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

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

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

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

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

20 (2) If evidence of the directive, revocation, appointment,
21 designation, disqualification, or withdrawal is in a



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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

4 (2) Provide continuing care to the patient while the
5 patient remains under the refusing provider or
6 institution's care; and

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

14 § -21 **Decision by guardian.** (a) A guardian may refuse
15 to comply with or revoke the individual's advance health care
16 directive only if the court appointing the guardian expressly
17 orders the noncompliance or revocation.

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



- 1 § **-22 Immunity.** (a) A health care professional or
2 health care institution acting in good faith shall not be
3 subject to civil or criminal liability or to discipline for
4 unprofessional conduct for:
- 5 (1) Complying with a health care decision made for an
6 individual by another person if compliance is based on
7 a reasonable belief that the person has authority to
8 make the decision, including a decision to withhold or
9 withdraw health care;
- 10 (2) Refusing to comply with a health care decision made
11 for an individual by another person if the refusal is
12 based on a reasonable belief that the person lacked
13 authority or capacity to make the decision;
- 14 (3) Complying with an advance health care directive based
15 on a reasonable belief that the directive is valid;
- 16 (4) Refusing to comply with an advance health care
17 directive based on a reasonable belief that the
18 directive is not valid, including a reasonable belief
19 that the directive was not made by the individual or,
20 after its creation, was substantively altered by a
21 person other than the individual who created it;



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

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

6 (7) Refusing to comply with an advance health care
7 directive if the directive requires care that is
8 contrary to generally accepted health care standards
9 applicable to the health care professional or health
10 care institution.

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

17 § -23 **Prohibited conduct; damages.** (a) A person shall
18 not:

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



- 1 (2) For the purpose of frustrating the intent of the
2 individual who created an advance health care
3 directive or with knowledge that doing so is likely to
4 frustrate the intent:
- 5 (A) Intentionally conceal, deface, obliterate, or
6 delete the directive or a revocation of the
7 directive without consent of the individual who
8 created or revoked the directive; or
- 9 (B) Intentionally withhold knowledge of the existence
10 or revocation of the directive from a responsible
11 health care professional or health care
12 institution providing health care to the
13 individual who created or revoked the directive;
- 14 (3) Coerce or fraudulently induce an individual to create,
15 revoke, or refrain from creating or revoking an
16 advance health care directive or a part of a
17 directive; or
- 18 (4) Require or prohibit the creation or revocation of an
19 advance health care directive as a condition for
20 providing health care.



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

6 (c) Subject to subsection (d), an individual who makes a
7 health care instruction, or the individual's estate, shall have
8 a cause of action against a health care professional or health
9 care institution that intentionally violates section -20 for
10 statutory damages of \$5,000 or actual damages resulting from the
11 violation, whichever is greater.

12 (d) An emergency department of a health care institution
13 or health care professional who is an emergency medical services
14 personnel or first responder personnel shall not be liable under
15 subsection (c) for a violation of section -20(e) if:

16 (1) The violation occurs in the course of providing care
17 to an individual experiencing a health condition for
18 which the professional reasonably believes the care is
19 appropriate to avoid imminent loss of life or serious
20 harm to the individual or providing care; provided
21 that the emergency medical services personnel or first



1 responder personnel were not aware in advance of a
2 provider order for life-saving treatment;

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

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

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

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

13 § -24 **Effect of copy; certified physical copy.** (a) A
14 physical or electronic copy of an advance health care directive,
15 revocation of an advance health care directive, or appointment,
16 designation, or disqualification of a surrogate shall have the
17 same effect as the original.

18 (b) An individual may create a certified physical copy of
19 an advance health care directive or revocation of an advance
20 health care directive that is in electronic form by affirming



1 under penalty of law that the physical copy is a complete and
2 accurate copy of the directive or revocation.

3 § -25 **Judicial relief.** (a) On petition of an
4 individual, the individual's surrogate, a health care
5 professional or health care institution providing health care to
6 the individual, or a person interested in the welfare of the
7 individual, the family court may:

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

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

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

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

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

20 (3) Enjoin another person from acting as a default
21 surrogate, on a finding that the other person acting



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



1 applicable, and a copy of the directive shall be provided to the
2 court.

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

5 § -26 **Construction.** (a) Nothing in this chapter shall
6 be construed to authorize mercy killing, assisted suicide, or
7 euthanasia.

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

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

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

20 (e) An advance health care directive shall be interpreted
21 in accordance with all other laws of this State, regardless of



1 whether it was created before, on, or after January 1, 2027,
2 excluding the State's choice-of-law rules, in effect at the time
3 the directive is implemented.

4 § -27 **Uniformity of application and construction.** In
5 applying and construing this chapter, a court may consider the
6 promotion of uniformity of the law among jurisdictions that
7 enact it.

8 § -28 **Saving provisions.** (a) An advance health care
9 directive created before January 1, 2027, shall be valid on
10 January 1, 2027, if it complies with this chapter or complied at
11 the time of creation with the law of the state in which it was
12 created.

13 (b) This chapter shall not affect the validity or effect
14 of an act done before January 1, 2027.

15 (c) A person who assumed authority to act as default
16 surrogate before January 1, 2027, may continue to act as default
17 surrogate until the individual for whom the default surrogate is
18 acting regains capacity to make health care decisions or the
19 default surrogate is disqualified, whichever occurs first.



1 § -29 **Transitional provision.** This chapter shall apply
2 to all advance health care directives, regardless of whether the
3 directive was created before, on, or after January 1, 2027."

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

6 "~~§286-109.4~~ **Designation of advance ~~health-care~~**
7 **health care directive.** On the application form for any driver's
8 license or license renewal, the examiner of drivers shall ask
9 the applicant to designate whether the applicant has an advance
10 ~~health-care~~ health care directive. The examiner of drivers
11 shall issue or renew a license bearing the designation "advance
12 ~~health-care~~ health care directive", a symbol, or an
13 abbreviation thereof, for those applicants who have so
14 indicated. "Advance ~~health-care~~ health care directive" means
15 an individual instruction in writing, a living will, or a
16 durable power of attorney for health care decisions. No
17 specific medical treatment information shall be imprinted on the
18 driver's license."

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

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



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

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

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

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

13 "**§321-23.6 Rapid identification documents.** (a) The
14 department shall adopt rules for emergency medical services that
15 shall include:

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



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:



- 1 (A) [~~Physician,~~] Responsible health care
- 2 professional;
- 3 (B) Attorney;
- 4 [~~(C) Guardian,~~
- 5 ~~(D)] (C) Surrogate; or~~
- 6 [~~(E)] (D) Any other person who may lawfully act on the~~
- 7 [patient's] individual's behalf.
- 8 [~~Two copies of the document shall be given to the~~
- 9 ~~patient, or the patient's guardian, agent, or~~
- 10 ~~surrogate.]~~
- 11 (b) The rules shall provide for the following:
- 12 (1) The [~~patient,~~] individual, or the [~~patient's guardian,~~
- 13 ~~agent, or]~~ individual's surrogate, may verbally revoke
- 14 the "comfort care only" document at any time,
- 15 including during the emergency situation;
- 16 (2) An anonymous tracking system shall be developed to
- 17 assess the success or failure of the procedures and to
- 18 ensure that abuse is not occurring; and
- 19 (3) If an emergency medical services [~~person,~~] personnel,
- 20 first responder[~~]~~ personnel, or any other health care
- 21 [~~provider]~~ professional believes in good faith that



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

13 (c) For the purposes of this section:

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

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

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

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



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

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

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

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

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

- 19 (1) A pharmacist licensed under chapter 461;
20 (2) A physician as defined in section [~~327E-2;~~] _____ -2;



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

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

9 "~~{~~§327-21~~}~~ **Effect of anatomical gift on advance**
10 ~~[health-care]~~ health care directive. (a) If a prospective
11 donor has a declaration or advance [~~health-care]~~ health care
12 directive, and the terms of the declaration or directive and the
13 express or implied terms of a potential anatomical gift are in
14 conflict with regard to the administration of measures necessary
15 to ensure the medical suitability of a body part for
16 transplantation or therapy, the prospective donor's attending
17 physician and prospective donor shall confer to resolve the
18 conflict. If the prospective donor is incapable of resolving
19 the conflict, an agent acting under the prospective donor's
20 declaration or directive, or, if none or if the agent is not
21 reasonably available, another person authorized by law other



1 than this chapter to make [~~health care~~] health care decisions on
2 behalf of the prospective donor, shall act for the donor to
3 resolve the conflict. The conflict shall be resolved as
4 expeditiously as possible. Information relevant to the
5 resolution of the conflict may be obtained from the appropriate
6 procurement organization and any other person authorized to make
7 an anatomical gift for the prospective donor under section
8 327-9. Before resolution of the conflict, measures necessary to
9 ensure the medical suitability of the body part may not be
10 withheld or withdrawn from the prospective donor if withholding
11 or withdrawing the measures is not contraindicated by
12 appropriate end-of-life care.

13 (b) [~~As used in~~] For the purposes of this section:

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

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



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

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

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

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

10 ""Legally authorized representative" means an agent,
11 guardian, or surrogate, as those terms are defined in section
12 [~~327E-2,~~] -2, or agent designated through a power of attorney
13 for health care, as defined in section [~~327E-2,~~] -2."

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

16 ""Provider orders for life-sustaining treatment form" means
17 a form signed by a patient[~~]~~ or l if incapacitated, by the
18 patient's legally authorized representative and the patient's
19 provider, that records the patient's wishes and that directs a
20 health care provider regarding the provision of resuscitative
21 and life-sustaining measures. A provider orders for



1 life-sustaining treatment form is not an advance [~~health-care~~]
2 health care directive."

3 SECTION 10. Section 327K-2, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) The patient's physician or a health care provider
6 shall explain to the patient the nature and content of the form,
7 including any medical intervention or procedures, and shall also
8 explain the difference between an advance [~~health-care~~] health
9 care directive and the form. The form shall be prepared by the
10 patient's physician or a health care provider based on the
11 patient's preferences and medical indications."

12 SECTION 11. Section 432E-4, Hawaii Revised Statutes, is
13 amended by amending subsection (c) to read as follows:

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

19 SECTION 12. Section 560:5-304, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:



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

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

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

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

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

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



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



1 limited guardianship is requested, the powers to be
2 granted to the limited guardian; and
3 (10) A general statement of the respondent's property with
4 an estimate of its value, including any insurance or
5 pension, and the source and amount of any other
6 anticipated income or receipts."

7 SECTION 13. Section 560:5-310, Hawaii Revised Statutes, is
8 amended as follows:

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

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

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

16 (2) A person nominated as guardian by the respondent,
17 including the respondent's most recent nomination made
18 in a durable power of attorney[~~7~~] or advance health
19 care directive if at the time of the nomination the
20 respondent had sufficient capacity to express a
21 preference;



- 1 (3) An agent appointed by the respondent under any
2 [~~medical~~] advance health care directive or health care
3 power of attorney or, if none, any [~~designated~~]
4 default surrogate under section [~~327E-5(f);~~] -12;
- 5 (4) The spouse or reciprocal beneficiary of the respondent
6 or a person nominated by will or other signed writing
7 of a deceased spouse or reciprocal beneficiary;
- 8 (5) An adult child of the respondent;
- 9 (6) A parent of the respondent, or an individual nominated
10 by will or other signed writing of a parent; and
- 11 (7) An adult with whom the respondent has resided for more
12 than six months before the filing of the petition."

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

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



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

3 SECTION 14. Section 560:5-316, Hawaii Revised Statutes, is
4 amended by amending subsections (c) and (d) to read as follows:

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

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

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

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



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

3 SECTION 15. 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 16. Chapter 327E, Hawaii Revised Statutes, is
11 repealed.

12 SECTION 17. Chapter 327G, Hawaii Revised Statutes, is
13 repealed.

14 PART II

15 SECTION 18. (a) The attorney general, in consultation with
16 the department of health, shall convene and facilitate a working
17 group to review, discuss, and provide recommendations regarding
18 the implementation of the Uniform Health-Care Decisions Act, as
19 amended by this Act. The working group shall include:

20 (1) One representative from the department of health;



- 1 (2) One representative from the department of the attorney
2 general;
- 3 (3) Six health care providers representing hospice,
4 palliative, hospital, or any other type of related
5 care to be appointed or invited by the attorney
6 general;
- 7 (4) One representative from Kokua Mau, to be invited by
8 the attorney general;
- 9 (5) Two representatives from the Healthcare Association of
10 Hawaii, to be invited by the attorney general; and
- 11 (6) Any other stakeholders deemed appropriate by the
12 attorney general to ensure balanced and informed
13 participation.
- 14 (b) The purpose of the working group shall be to:
 - 15 (1) Identify any implementation issues, ambiguities, or
16 unintended consequences arising from the amendments to
17 the Uniform Health-Care Decisions Act;
 - 18 (2) Evaluate the impact of this Act on existing advance
19 health care directive practices, including those used
20 by hospice and palliative care providers;



S.B. NO. 3077
S.D. 2

Report Title:

AG; Uniform Health Care Decisions Act (Modified); Advance Health Care Directives; Advance Mental Health Care Directives; Working Group; Report

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. Requires the Attorney General to convene a working group. Requires a report to the Legislature. Effective 1/30/2050. Implementation effective 7/1/20209. (SD2)

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

