

**ACT 224**

S.B. NO. 1238

A Bill for an Act Relating to Mental Health.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to allow individuals to make known their preferences for their mental health care and treatment when they are able so that these preferences can guide care and treatment if the individual later loses the capacity to make such decisions due to a mental illness. This Act also allows individuals to appoint an agent and alternate agents to make mental health care decisions on behalf of the individual if the individual later loses the capacity to make such decisions due to a mental illness.

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

**“CHAPTER  
ADVANCE MENTAL HEALTH CARE DIRECTIVES**

**§ -1 Purpose.** The State finds that all competent persons have the fundamental right to control decisions relating to their own mental health care, including the decision to accept or refuse all types of mental health treatment. The rights of individuals shall be respected when they have lost the capacity to participate actively in decisions regarding themselves or their mental health care and treatment. The laws of the State of Hawaii shall recognize the right of persons eighteen years of age or older and emancipated minors to make a written advance mental health care directive expressing their preferences and instructions regarding mental health care and treatment, including the consent to, or refusal of, that care and treatment, and to designate an agent or alternate agents to make mental health care decisions on behalf of the individual, when that individual later loses the capacity to make those decisions due to a mental illness.

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

“Advance mental health care directive” means a written document expressing preferences, instructions, or a power of attorney for mental health treatment.

“Agent” means a competent adult designated in a power of attorney contained in an advance mental health care directive to make a mental health care decision for the individual granting the power and includes all designated alternate agents.

“Best interests” means that the benefits to the principal resulting from a mental health treatment outweigh the burdens to the principal resulting from that treatment and includes:

- (1) The effect of the mental health treatment on the physical, mental, emotional, and cognitive functions of the principal;
- (2) The degree of physical and mental pain or discomfort caused to the principal by the mental health treatment or the withholding or withdrawal of that treatment;
- (3) The degree to which the principal’s medical condition, the mental health treatment, or the withholding or withdrawal of mental health treatment, results in a severe and continuing impairment;
- (4) The effect of the mental health treatment on the life expectancy of the principal;
- (5) The prognosis of the principal for recovery or remission, with and without the mental health treatment;
- (6) The risks, side effects, and benefits of the mental health treatment or the withholding of mental health treatment; and
- (7) The religious beliefs and basic values of the principal receiving mental health treatment known to the agent, to the extent that these may assist the agent in determining benefits and burdens.

“Capacity” means a principal’s ability to understand the significant benefits, risks, and alternatives to proposed mental health care or treatment and to make and communicate a mental health care decision.

“Competent adult” means an individual eighteen years of age or older who has the capacity to understand the significant benefits, risks, and alternatives to proposed mental health care or treatment and to make and communicate mental health care decisions.

“Emancipated minor” means an individual less than eighteen years of age who is deemed to be emancipated pursuant to section 577-25.

“Guardian” means a judicially appointed guardian or conservator having authority to make a mental health care decision for a principal, appointed under part 3 of article V of chapter 560.

“Health care institution” means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

“Health care provider” means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

“Mental health care” means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a principal’s mental condition, including:

- (1) Selection and discharge of health care providers and institutions;
- (2) Approval or disapproval of diagnostic tests, surgical procedures, and programs of medication; and
- (3) Approval or disapproval of electroconvulsive treatment.

“Mental health care decision” means a decision made by a principal or the principal’s agent or guardian regarding the principal’s mental health care or mental health treatment.

“Mental health treatment” means any form of treatment used for the treatment of mental illness, including but not limited to electroconvulsive treatment, the use of psychotropic medication, and admission to and retention in a health care facility for the care or treatment of mental illness.

“Physician” means an individual authorized to practice medicine under chapter 453 or osteopathy under chapter 460.

“Power of attorney” means the designation of an agent to make mental health care decisions for the principal granting the power.

“Primary physician” means a physician designated by a principal or the principal’s agent or guardian to have primary responsibility for the principal’s health care, including mental health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

“Principal” means a competent adult or emancipated minor who has executed a written advance mental health care directive or power of attorney for mental health care.

“Psychologist” means an individual authorized to practice psychology under chapter 465.

“State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

“Supervising health care provider” means the primary physician or the physician’s designee, or the health care provider or the provider’s designee who has undertaken primary responsibility for a principal’s health care, that includes mental health care.

§ -3 **Advance mental health care directive; designation of agent.** (a) A competent adult or emancipated minor may make a written advance mental health care directive declaring preferences or instructions regarding mental health treatment. The preferences or instructions may include consent to, or refusal of, mental health treatment. An advance mental health care directive may be a part of, or combined with, a written advance health care directive under chapter 327E.

(b) A principal, in a power of attorney contained in the written advance mental health care directive, may designate a competent adult to act as an agent to

make any and all mental health care and mental health treatment decisions on behalf of the principal when the principal lacks capacity, unless otherwise specified or limited by the advance mental health care directive. A principal, in a power of attorney contained in the written advance mental health care directive, may also designate competent adults to act as alternate agents, in the order so designated, if the original agent is unable or unwilling to act.

(c) A written advance mental health care directive may include the principal's nomination of a guardian of the person. The court shall make its appointment of a guardian of the person in accordance with the principal's most recent nomination in a valid and unrevoked advance mental health care directive, except for good cause shown.

(d) No individual shall be required to execute or refrain from executing an advance mental health care directive or power of attorney as a condition for insurance coverage, receiving mental or physical health services, receiving privileges while in a health care institution, or as a condition of discharge from a health care institution.

(e) An advance mental health care directive is valid and effective only if it is in writing, contains the date of its execution, is signed by the principal, and is witnessed in one of the following methods:

- (1) Signed by at least two competent adults, except those as provided in subsection (f), each of whom shall attest that the principal is known to them, signed the advance mental health care directive in their presence, and appears to be of sound mind and not under duress, fraud, or undue influence; or
- (2) Acknowledged before a notary public within this State.

(f) None of the following may serve as a witness to the signing of an advance mental health care directive:

- (1) A health care provider, supervising health care provider, or an employee or relative of a health care provider or supervising health care provider;
- (2) An owner, operator, or employee of a health care provider or health care institution in which the principal is a patient or resident;
- (3) A person related to the principal by blood, marriage, or adoption; or
- (4) The agent or alternate agents.

(g) None of the following may serve as an agent or alternate agent under a designation in a power of attorney contained in an advance mental health care directive:

- (1) A health care provider, supervising health care provider, or an employee of a health care provider or supervising health care provider, unless that person is related to the principal by blood, marriage, or adoption; or
- (2) An owner, operator, or employee of a health care provider or health care institution in which the principal is a patient or resident, unless that person is related to the principal by blood, marriage, or adoption.

(h) An advance mental health care directive and power of attorney becomes effective when it is delivered to a health care provider, supervising health care provider, or health care institution and remains effective until revoked.

(i) An advance mental health care directive executed prior to the effective date of this chapter shall be valid for the purposes of this chapter if it complies substantially with this chapter or if it was executed in compliance with the laws of the state where it was executed.

**§ -4 Revocation of advance mental health care directive.** (a) A principal who has capacity at the time may revoke all or part of an advance mental health care

directive, including the designation of an agent or alternate agents, at any time and in any manner that communicates intent to revoke. The principal shall give notice of the revocation to a health care provider, supervising health care provider, health care institution, agent, or guardian.

(b) A health care provider, agent, or guardian who is informed of a revocation shall promptly communicate the fact and extent of the revocation to the supervising health care provider and to any health care institution in which the principal is a patient or resident.

(c) A revocation is effective when notice of the revocation is received by the supervising health care provider or health care institution. The supervising health care provider or health care institution shall promptly record the fact and extent of the revocation, including the date and time of the revocation, in the principal's medical record.

(d) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent, unless otherwise specified in the decree or in the advance mental health care directive.

(e) An advance mental health care directive that conflicts with an earlier advance mental health care directive revokes the earlier directive to the extent of the conflict.

**§ -5 Authority and duty of agent; limitations on liability.** (a) The authority of an agent becomes effective only upon a determination that the principal lacks capacity and ceases to be effective upon a determination made under section -7 that the principal has recovered capacity, unless otherwise specified in the advance mental health care directive.

(b) An agent has the authority to make any and all mental health care decisions on behalf of the principal while the principal lacks capacity, unless otherwise specified or limited in the advance mental health care directive.

(c) In exercising authority, an agent has a duty to act consistently with the provisions of the advance mental health care directive. An agent shall make all mental health care decisions in accordance with the principal's preferences or instructions expressed in the advance mental health care directive, if any, and the principal's other wishes to the extent known to the agent. If the principal's preferences, instructions, and wishes are not expressed or known, the agent shall make the decision in accordance with the agent's good faith determination of the principal's best interests. In determining the principal's best interests, the agent shall consider the principal's personal values to the extent known to the agent.

(d) An agent has the same right as the principal to receive information regarding the proposed mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment, unless limited by the advance mental health care directive or any federal law. This right of access and disclosure does not waive any evidentiary privilege.

(e) A mental health care decision made by an agent for a principal shall be effective without judicial approval.

(f) An agent is not, solely as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal.

(g) An agent whose decisions regarding the principal are made in good faith, pursuant to the provisions of the advance mental health care directive, shall not be subject to criminal prosecution, civil liability, or professional disciplinary action with respect to those decisions.

**§ -6 Withdrawal of agent; rescission of withdrawal.** (a) An agent may withdraw by giving notice to the principal, if the principal has capacity at the time. If the principal lacks capacity, the agent may withdraw by giving notice to the

supervising health care provider or health care institution. The supervising health care provider or health care institution shall promptly record the withdrawal, including the date and time of the withdrawal, in the principal's medical record.

(b) An individual who has withdrawn under subsection (a) may rescind the withdrawal by executing and dating a written acceptance of the designation as agent after the date of the withdrawal. An individual who rescinds a withdrawal shall give notice and a copy of the written acceptance to the principal, if the principal has capacity at the time. If the principal lacks capacity, the individual who rescinds a withdrawal shall give notice and a copy of the written acceptance to the supervising health care provider or health care institution. The supervising health care provider or health care institution shall promptly record the rescission, including the date and time of the rescission, in the principal's medical record and make the written acceptance a part of the principal's medical record.

**§ -7 Presumption of capacity; determination of lack of capacity; recovery of capacity.** (a) A principal is presumed to have capacity to make mental health care decisions and to execute or revoke an advance mental health care directive or power of attorney designating an agent. Even if the principal has an advance mental health care directive, the principal has the right to make decisions regarding mental health care or mental health treatment, so long as the principal has capacity.

(b) The fact that a principal has executed an advance mental health care directive shall not create a presumption, nor constitute evidence or an indication, that the principal is mentally incompetent or lacks capacity.

(c) This chapter shall not create a presumption concerning the intention of an individual who has not executed or who has revoked an advance mental health care directive or power of attorney.

(d) For the purposes of this chapter, the determination that a principal lacks capacity shall be made by the supervising health care provider who is a physician and one other physician or licensed psychologist after both have conducted an examination of the principal. Upon examination and a joint determination that the principal lacks capacity, the supervising health care provider shall promptly note the determination in the principal's medical record, including the facts and professional opinions that form the basis of the determination, and shall promptly notify the agent that the principal lacks capacity and that the advance mental health care directive has been invoked.

(e) The determination that a principal has recovered capacity shall be made by the supervising health care provider who is a physician. The supervising health care provider shall promptly note the recovery of capacity in the principal's medical record, and shall promptly notify the agent that the principal has recovered capacity.

**§ -8 Limitations on applicability of advance mental health care directive.** (a) A supervising health care provider, health care provider, or health care institution may subject the principal to mental health treatment in a manner contrary to the principal's preferences and instructions as expressed in an advance mental health care directive only:

- (1) When a court order under part 3 of article V of chapter 560 contradicts the principal's preferences and instructions as expressed in the advance mental health care directive; or
- (2) In cases of emergency when the principal poses an imminent threat to the safety of self or others.

(b) Neither an advance mental health care directive nor this chapter limits any authority either to take an individual into custody or to admit, retain, or treat an individual in a health care institution pursuant to part IV of chapter 334.

**§ -9 Decisions by guardian.** (a) A duly appointed guardian of the person of the principal shall comply with the principal's preferences or instructions expressed in the advance mental health care directive and shall not revoke the principal's advance mental health care directive, unless otherwise expressly authorized by a court of competent jurisdiction.

(b) Absent a court order to the contrary, a mental health care decision of an agent takes precedence over that of a guardian.

(c) A mental health care decision made by a guardian for the principal is effective without judicial approval, unless contrary to the principal's preferences or instructions expressed in the advance mental health care directive.

**§ -10 Obligations of health care providers; limitations on liability.** (a) The supervising health care provider, health care provider, or health care institution shall continue to obtain the principal's informed consent to all mental health treatment decisions when the principal has capacity to provide informed consent or refusal. Unless the principal is deemed to lack capacity pursuant to this chapter, the instructions or decisions of the principal at the time of mental health treatment shall supersede the preferences or instructions expressed in the principal's advance mental health care directive.

(b) Upon being presented with an advance mental health care directive, the supervising health care provider or health care institution shall make the advance mental health care directive a part of the principal's medical record. When acting under the authority of an advance mental health care directive, the supervising health care provider, health care provider, or health care institution shall comply with it to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested, and applicable law. In the event that one or more parts of the advance mental health care directive cannot be followed, all other parts of the advance mental health care directive shall nonetheless be followed.

(c) A supervising health care provider, health care provider, or health care institution may consider an advance mental health care directive to be valid and rely upon it in the absence of actual knowledge or notice of its revocation or invalidity.

(d) If the supervising health care provider or health care institution is unwilling at any time to comply with the advance mental health care directive or instructions of an agent, the supervising health care provider or health care institution may withdraw from providing mental health treatment consistent with the exercise of independent medical judgment. Upon withdrawal, the supervising health care provider or health care institution shall promptly notify the principal and agent and shall promptly record the notification in the principal's medical record.

(e) A physician or licensed psychologist, who in good faith determines that the principal has or lacks capacity in accordance with this chapter to decide whether to invoke an advance mental health care directive, is not subject to criminal prosecution, civil liability, or professional disciplinary action for making and acting upon that determination.

(f) In the absence of actual knowledge or notice of the revocation of an advance mental health care directive, the supervising health care provider, health care provider, or health care institution shall not be subject to criminal prosecution, civil liability, or professional disciplinary action as a result of providing or withholding mental health treatment to a principal in accordance with this chapter or the advance mental health care directive, unless the absence of actual knowledge or notice resulted from the negligence of the supervising health care provider, health care provider, or health care institution.

(g) The supervising health care provider, health care provider, or health care institution who provides or withholds mental health treatment under this chapter or the advance mental health care directive shall not incur liability arising out of a

claim to the extent that the claim is based upon lack of informed consent or authorization for the action.

(h) This section shall not be construed as affecting or limiting liability that arises out of a negligent act or omission in connection with the medical diagnosis, care, or mental health treatment of a principal under an advance mental health care directive or that arises out of any deviation from reasonable medical standards.

(i) This chapter does not authorize or require a supervising health care provider, health care provider, or health care institution to provide mental health treatment contrary to generally accepted health care standards applicable to the health care provider or institution.

**§ -11 Statutory damages.** (a) A supervising health care provider or health care institution that intentionally violates this chapter shall be liable to the principal or the principal's estate for damages of \$500 or actual damages resulting from the violation, whichever is greater, and reasonable attorney's fees. The damages payable in this section shall be in addition to any other damages permitted by law.

(b) A person who intentionally alters, conceals, obliterates, or falsifies an individual's advance mental health care directive or a revocation of an advance mental health care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give an advance mental health care directive, shall be subject to liability to that individual for damages of \$2,500 or actual damages resulting from the action, whichever is greater, and reasonable attorney's fees.

**§ -12 Effect of copy.** A copy of an advance mental health care directive, revocation of an advance mental health care directive, or designation, revocation, withdrawal, or rescission of withdrawal of an agent has the same effect as the original.

**§ -13 Judicial relief.** (a) On petition of a principal, the principal's agent or guardian, a health care provider, or a health care institution involved with the principal's care, any court of competent jurisdiction may enjoin or direct a mental health care decision or order other equitable relief. A proceeding under this section shall be governed by part 3 of article V of chapter 560.

(b) Any such petition filed shall include notice of the existence of an advance mental health care directive and a copy of the directive shall be provided to the court.

**§ -14 Optional form.** The following sample form may be used to create an advance mental health care directive. This sample form may be duplicated, or modified to suit the needs of the person. Any written document that contains the substance of the following information may be used in an advance mental health care directive:

## “ADVANCE MENTAL HEALTH CARE DIRECTIVE

### Explanation

You have the right to give instructions about your own mental health care. You also have the right to name someone else to make mental health treatment decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your health care providers. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.



Part 1 of this form is a list of options you may designate as part of your mental health care and treatment. For ease of designating specific instructions, mark those options in Part 1.

Part 2 of this form is a power of attorney for mental health care. This lets you name another individual as your agent to make mental health treatment decisions for you, if you become incapable of making your own decisions, or if you want someone else to make those decisions for you now, even though you are still capable of making your own decisions. You may name alternate agents to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a health care institution where you are receiving care.

You may allow your agent to make all mental health treatment decisions for you. However, if you wish to limit the authority of your agent, you may specify those limitations on the form. If you do not limit the authority of your agent, your agent will have the right to:

- (1) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a mental condition;
- (2) Select or discharge health care providers and institutions;
- (3) Approve or disapprove diagnostic tests, surgical procedures, and programs of medication; and
- (4) Approve or disapprove of electroconvulsive treatment.

Part 3 of this form lets you give specific instructions about any aspect of your mental health care and treatment. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of medication and treatment. Space is provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 4 of this form must be completed in order to activate the advance mental health care directive. After completing this form, sign and date the form at the end and have the form witnessed by one or both of the two methods listed below. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any mental health care agents you have named. You should talk to the persons you have named as agents to make sure that they understand your wishes and are willing to take the responsibility.

You have the right to revoke this advance mental health care directive or replace this form at any time, unless otherwise specified in writing in the advance mental health care directive.

If you are in imminent danger of causing bodily harm to yourself or others, or have been involuntarily committed to a health care institution for mental health treatment, the advance mental health care directive will not apply.

### PART 1 CHECKLIST OF MENTAL HEALTH CARE OPTIONS

**NOTE TO PROVIDER:** The following is a checklist of selections I have made regarding my mental health care and treatment. I include this statement to express my strong desire for you to acknowledge and abide by my rights, under state and federal laws, to influence decisions about the care I will receive. (Declarant: Put a check mark in the left-hand column for each section you have completed.)

- Designation of my mental health care agent(s).
- Authority granted to my agent(s).
- My preference for a court appointed guardian.
- My preference of treating facility and alternatives to hospitalization.

- \_\_\_\_ My preferences about the physicians or other mental health care providers who will treat me if I am hospitalized.
- \_\_\_\_ My preferences regarding medications.
- \_\_\_\_ My preferences regarding electroconvulsive therapy (ECT or shock treatment).
- \_\_\_\_ My preferences regarding emergency interventions (seclusion, restraint, medications).
- \_\_\_\_ Consent for experimental drugs or treatments.
- \_\_\_\_ Who should be notified immediately of my admission to a facility.
- \_\_\_\_ Who should be prohibited from visiting me.
- \_\_\_\_ My preferences for care and temporary custody of my children or pets.
- \_\_\_\_ Other instructions about mental health care and treatment.

**PART 2**  
**DURABLE POWER OF ATTORNEY FOR MENTAL HEALTH TREATMENT DECISIONS**

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make mental health care decisions for me:

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(name of individual you choose as agent)

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(address) (city) (state) (zip code)

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(home phone) (work phone)

OPTIONAL: If I revoke my agent’s authority or if my agent is not willing, able, or reasonably available to make a mental health care decision for me, I designate as my first alternate agent:

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(name of individual you choose as first alternate agent)

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(address) (city) (state) (zip code)

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(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able, or reasonably available to make a mental health care decision for me, I designate as my second alternate agent:

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(name of individual you choose as second alternate agent)

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(address) (city) (state) (zip code)

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(home phone) (work phone)

(2) AGENT’S AUTHORITY: My agent is authorized to make all mental health care treatment decisions for me, including decisions to provide, withhold, or withdraw medication and treatment, and all other forms of mental health care, except as I state here:

(Add additional sheets if needed.)

(3) WHEN AGENT’S AUTHORITY BECOMES EFFECTIVE: My agent’s authority becomes effective when my supervising health care provider who is a physician and one other physician or licensed psychologist determine that I am unable to make my own mental health care decisions.

(4) AGENT’S OBLIGATION: My agent shall make mental health care decisions for me in accordance with this power of attorney for mental health care,

any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make mental health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) **NOMINATION OF GUARDIAN:** If a guardian of the person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

**PART 3  
INSTRUCTIONS FOR MENTAL HEALTH CARE AND TREATMENT**

If you are satisfied to allow your agent to determine what is best for you, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) My preference of treating facility and alternatives to hospitalization:

(7) My preferences about the physicians or other mental health care providers who will treat me if I am hospitalized:

(8) My preferences regarding medications:

(9) My preferences regarding electroconvulsive therapy (ECT or shock treatment):

(10) My preferences regarding emergency interventions (seclusion, restraint, medications):

(11) Consent for experimental drugs or treatments:

(12) Who should be notified immediately of my admission to a facility:

(13) Who should be prohibited from visiting me:

(14) My preferences for care and temporary custody of my children or pets:

(15) My preferences about revocation of my advance mental health care directive during a period of incapacity:

(16) **OTHER WISHES:** (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

(Add additional sheets if needed.)

**PART 4  
WITNESSES AND SIGNATURES**

(17) **EFFECT OF COPY:** A copy of this form has the same effect as the original.

(18) **SIGNATURES:** Sign and date the form here:

\_\_\_\_\_ (date) \_\_\_\_\_ (sign your name)

\_\_\_\_\_ (address) \_\_\_\_\_ (print your name)

\_\_\_\_\_ (city) \_\_\_\_\_ (state)

(19) **WITNESSES:** This power of attorney will not be valid for making mental health care decisions unless it is either: (a) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or (b) acknowledged before a notary public in the State.

AFFIRMATION OF WITNESSES

Witness 1

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, nor an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

\_\_\_\_\_  
(date) (sign your name)  
\_\_\_\_\_  
(address) (print your name)  
\_\_\_\_\_  
(city) (state)

Witness 2

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health care provider, nor an employee of a health care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

\_\_\_\_\_  
(date) (sign your name)  
\_\_\_\_\_  
(address) (print your name)  
\_\_\_\_\_  
(city) (state)

DECLARATION OF NOTARY

State of Hawaii  
County of \_\_\_\_\_  
On this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, \_\_\_\_\_ (insert name of notary public) appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it.

Notary Seal \_\_\_\_\_  
(Signature of Notary Public)''

SECTION 3. Chapter 327F, Hawaii Revised Statutes, is repealed.

SECTION 4. If House Bill No. 2297 is passed by the legislature during this Regular Session of 2004, and becomes an Act<sup>1</sup> whether before or after the effective

date of this Act, then, effective January 1, 2005, subsection (b) of the new section 560:5-304 in section 1 of that Act<sup>1</sup> shall be amended to read:

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

- (1) The respondent’s name, age, principal residence, current street address, and, if different, the address of the dwelling in which it is proposed that the respondent will reside if the appointment is made;
- (2) The name and address of the respondent’s:
  - (A) Spouse or reciprocal beneficiary, or if the respondent has none, an adult with whom the respondent has resided for more than six months before the filing of the petition; and
  - (B) Adult children or, if the respondent has none, the respondent’s parents and adult siblings, or if the respondent has none, at least one of the adults nearest in kinship to the respondent who can be found;
- (3) The name and address of any person responsible for care or custody of the respondent;
- (4) The name and address of any legal representative of the respondent;
- (5) The name and address of any person nominated as guardian by the respondent;
- (6) The name and address of any agent appointed by the respondent under any medical directive, mental health care directive, or health care power of attorney, or, if none, any designated surrogate under section 327E-5(f);
- (7) The name and address of any proposed guardian and the reason why the proposed guardian should be selected;
- (8) The reason why guardianship is necessary, including a brief description of the nature and extent of the respondent’s alleged incapacity;
- (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 5.** This Act shall take effect on its approval.

(Approved July 13, 2004.)

**Note**

1. Act 161.