

UNIFORM HEALTH CARE DECISIONS ACT (2023)

10/25/21 DRAFT

TABLE OF CONTENTS

5	<b>Section 1. Title</b>	<b>2</b>
6	<b>Section 2. Definitions</b>	<b>2</b>
7	<b>Section 3. Presumptions; Validity of Health-Care Instruction</b>	<b>5</b>
8	<b>Section 4. Determination of Lack of Capacity</b>	<b>5</b>
9	<b>Section 5. Objection to Determination of Lack of Capacity</b>	<b>7</b>
10	<b>Section 6. Health-Care Instruction</b>	<b>7</b>
11	<b>Section 7. Power of Attorney for Health Care</b>	<b>8</b>
12	<b>Section 8. Advance Health-Care Directive for Mental Health Care</b>	<b>10</b>
13	<b>Section 10. Default Surrogate</b>	<b>12</b>
14	<b>Section 11. Revocation of Advance Health-Care Directive</b>	<b>14</b>
15	<b>Section 12. Duties of Agent and Default Surrogate</b>	<b>15</b>
16	<b>Section 13. Powers of Agent and Default Surrogate</b>	<b>16</b>
17	<b>Section 14. Duties of Supervising Health-Care Provider, Health-Care Provider and Health-Care Institution</b>	<b>17</b>
18	<b>Section 15. Decisions by Guardian</b>	<b>19</b>
19	<b>Section 16. Immunities</b>	<b>19</b>
20	<b>Section 17. Prohibited Conduct; Damages</b>	<b>20</b>
21	<b>Section 18. Effect of Copy</b>	<b>21</b>
22	<b>Section 19. Construction</b>	<b>21</b>
23	<b>Section 20. Judicial relief</b>	<b>21</b>
24	<b>Section 21. Uniformity of Application and Construction</b>	<b>22</b>
25	<b>Section 23. Saving Provision</b>	<b>22</b>
26	<b>[Section 24. Severability.</b>	<b>22</b>
27	<b>Section 25. Repeals; Conforming Amendments</b>	<b>22</b>

2  
3

4 **UNIFORM HEALTH-CARE DECISIONS ACT (2023)**

5 **10/25/21 DRAFT**

6 **Section 1. Title**

7 This [act] may be cited as the Uniform Health-Care Decisions Act.

8 **Section 2. Definitions**

9 In this [act]:

10 (1) "Advance health-care directive" means a power of attorney for health care or a  
11 health-care instruction.

12 (2) "Agent" means an individual appointed in a power of attorney for health care  
13 to make a health-care decision for the individual making the appointment.

14 (3) "Default surrogate" means an individual authorized under Section 10 to make  
15 a health-care decision for another individual.

16 (3) "Electronic" means relating to technology having electrical, digital, magnetic,  
17 wireless, optical, electromagnetic, or similar capabilities.

18 (4) "Guardian" means a person appointed under other law by a court to make  
19 health-care decisions for an individual. The term includes a co-guardian. The term does not  
20 include a guardian ad litem.

21 (5) "Health care" means care, treatment, service, or procedure to maintain,  
22 diagnose, or otherwise affect an individual's physical or mental condition.

23 (6) "Health-care decision" means a decision made by an individual or the  
24 individual's surrogate regarding the individual's health care, including:

1 (A) selection and discharge of health-care providers and health-care  
2 institutions;

3 (B) approval or disapproval of diagnostic tests, surgical procedures,  
4 programs of medication, and orders not to resuscitate; and

5 (C) directions to provide, withhold, or withdraw health care, including  
6 artificial nutrition and hydration.

7 (7) "Health-care institution" means a facility or agency licensed, certified, or  
8 otherwise authorized or permitted by other law to provide health care in this state in the ordinary  
9 course of business.

10 (8) "Health-care instruction" means a direction, oral or in a record, made by an  
11 individual that indicates the individual's preferences concerning the provision of health care to  
12 the individual. The term includes a record which is intended to be effective at a future time if  
13 specified conditions arise.

14 (9) "Health-care provider" means a physician or other individual licensed,  
15 certified, or otherwise authorized or permitted by other law to provide health care in this state in  
16 the ordinary course of business or practice of the physician's or individual's profession.

17 (10) "Individual" means an adult or emancipated minor.

18 (11) "Lacks capacity" means an individual is unable to understand and appreciate  
19 the nature and consequences of a decision or is unable to communicate the decision, even with  
20 appropriate services, technological assistance, or supported decision making.

21 (12) "Person" means an individual, estate, business or nonprofit entity, public  
22 corporation, government or governmental subdivision, agency or instrumentality, or other legal  
23 entity.

1 (13) "Physician" means an individual authorized to practice medicine under [cite  
2 to state law authorizing the practice of medicine[or osteopathy under [cite to state law  
3 authorizing the practice of osteopathy]].

4 (14) "Power of attorney for health care" means a record granting an agent the  
5 power to make health-care decisions for the individual granting the power.

6 (15) "Primary physician" means a physician designated by an individual or the  
7 individual's surrogate to have primary responsibility for the individual's health care or, in the  
8 absence of a designation or if the designated physician is not reasonably available, a physician  
9 who undertakes the responsibility.

10 (16) "Reasonably available" means readily able to be contacted without undue  
11 effort and willing and able to act in a timely manner considering the urgency of an individual's  
12 health-care need.

13 (17) "Record" means information:

14 (A) inscribed on a tangible medium; or

15 (B) stored in an electronic or other medium and retrievable in perceivable  
16 form.

17 (18) "Sign" means, with present intent to authenticate or adopt a record:

18 (A) execute or adopt a tangible symbol; or

19 (B) attach to or logically associate with the record an electronic symbol,  
20 sound, or process.

21 (19) "Supervising health-care provider" means the primary physician or, if there is  
22 no primary physician or the primary physician is not reasonably available, the health-care  
23 provider who has undertaken primary responsibility for an individual's health care.

1 (20) “Supported decision making” means assistance from one or more persons of  
2 an individual’s choosing in understanding the nature and consequences of potential personal and  
3 financial decisions, which enables the individual to make the decisions, and in communicating a  
4 decision once made if consistent with the individual’s wishes.

5 (21) “Surrogate” means an agent appointed by an individual under this [act] to  
6 make health-care decisions for the individual, a default surrogate, or a guardian appointed to  
7 make health care decisions for an individual under other law.

8 *Legislative Note: If the state has separate terms for and laws authorizing the practice of general*  
9 *medicine and osteopathy, use the bracketed language in paragraph (13) and insert citations to*  
10 *the appropriate statutes. If the practice of osteopathy in the state is included in the term*  
11 *“medicine” and is authorized by the state’s law regarding the practice of general medicine, the*  
12 *bracketed language should be deleted.*

13

14 **Section 3. Presumptions; Validity of Health-Care Instruction**

15 (a) This [act] does not affect the right of an individual to make a health-care decision  
16 unless the individual lacks capacity to do so.

17 (b) An individual is presumed to have capacity to make a health-care decision, to create  
18 or revoke an advance health-care directive and to designate or disqualify a default surrogate.

19 (c) This [act] does not create a presumption concerning the intention of an individual who  
20 has not created or who has revoked an advance health-care directive.

21 (d) An advance health-care directive is valid if it complies with this [act], regardless of  
22 when or where created, signed or communicated.

23 **Section 4. Determination of Lack of Capacity**

24 (a) A determination that an individual lacks capacity to make a health-care decision may  
25 be made by a court or by any of the following individuals who has personally examined the  
26 individual and is not related by blood or marriage to the individual or the individual’s surrogate:

- 1 (1) physician; [or]
- 2 (2) licensed psychologist[.]; [or]
- 3 [(3) physician’s assistant[.]; [or ]
- 4 [(4) advanced practice registered nurse.]

5 (b) If a determination is made that an individual lacks capacity to make a health-care  
6 decision because of the existence of mental illness, cognitive disability, or developmental  
7 disability, the individual making the determination must have training and expertise in the  
8 assessment of functional abilities and limitations.

9 (c) A determination under this section must:

- 10 (1) be in a record signed by the individual making the determination;
- 11 (2) state the opinion of the individual making the determination as to cause and  
12 nature of the other individual’s lack of capacity to make a healthcare decision as well as its  
13 extent and probable duration; and
- 14 (3) must be made according to accepted standards of medical judgment and to a  
15 reasonable degree of medical certainty.

16 (d) A determination that an individual lacks capacity to make a health-care decision may  
17 apply to a particular health-care decision, to a specified set of health-care decisions, or to all  
18 health-care decisions.

19 (e) If requested by the individual determined to lack capacity, the individual’s surrogate,  
20 or another individual interested in the welfare of the individual, the determination of lack of  
21 capacity to make a health-care decision must be confirmed by another individual described in  
22 subsection (a) to be effective.

23 ***Legislative Note:*** *In subsection (a), the state should decide whether to include physician’s*  
24 *assistants and advanced practice registered nurses in the list of health professionals who may*

1 *make the determination that an individual lacks capacity and include the language in the*  
2 *brackets that reflects the decision.*

3

4

#### **Section 5. Objection to Determination of Lack of Capacity**

5

6

7

(a) An individual determined to lack capacity under Section 4 may challenge the determination in a record signed by the individual or by orally informing a health-care provider of the challenge. The following apply:

8

9

10

11

(1) A health-care provider who is informed of the challenge shall promptly communicate the challenge to the supervising health-care provider and to {an administrator with responsibility for medical records} of the health-care institution at which the individual is receiving care.

12

13

(2) The individual shall be treated as having capacity unless the court makes a determination under subsection (b) that the individual lacks capacity.

14

15

16

17

18

19

20

21

(b) An individual determined to lack capacity under Section 4, or another person interested in the welfare of the individual, may file a petition with the court in the county in which the individual resides or is located asking the court to determine whether the individual lacks capacity. If a petition is filed under this subsection, the court shall appoint a guardian ad litem to represent the individual for the purposes of this subsection. The court shall conduct a hearing on the petition as soon as possible but not later than [7] days after the petition is filed. As soon as possible but not later than [7] days after the hearing, the court shall determine whether the individual lacks capacity.

22

#### **Section 6. Health-Care Instruction**

23

24

(a) An individual may create a health-care instruction. The instruction may include the individual's wishes regarding the provision, withholding, or withdrawal of any form of health

1 care, including life-sustaining treatment and mental health treatment, and the individual's  
2 preferences for;

3 (1) health care-providers or health-care institutions;

4 (2) how health-care decisions will be made and communicated;

5 (3) persons that the individual would or would not like to be consulted regarding  
6 health-care decisions for the individual;

7 (4) a person to serve as guardian for the individual should one be appointed; and

8 (5) a person to serve as a default surrogate.

9 (b) A health-care provider providing health-care treatment to an individual to whom the  
10 individual communicates an instruction under subsection (a) shall reflect the instruction and the  
11 date of the instruction in the individual's medical record.

12 (c) A health-care instruction that conflicts with a prior health-care instruction, including  
13 in each case an instruction reflected in a [physician order for life sustaining treatment], revokes  
14 the prior instruction to the extent of the conflict.

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

17 **Legislative Note:** *In subsection (c), the state should insert the term used in the state for a*  
18 *medical order commonly known as a Physician Order for Life Sustaining Treatment.*

19

20 **Section 7. Power of Attorney for Health Care**

21 (a) An individual may create a power of attorney for health care to authorize an agent to  
22 make a health-care decision for the individual if the individual is determined to lack capacity.

23 Unless related to the individual by blood, marriage, or adoption, an agent may not be an owner,  
24 operator, or employee of [a residential long-term health-care institution] at which the individual

1 is receiving care. A health-care decision made by an agent for an individual under a power of  
2 attorney for health care is effective without judicial approval.

3 (b) A power of attorney for healthcare must be in a record, signed by the individual  
4 granting the power and witnessed by an adult who is:

5 (1) not the agent appointed by the individual;

6 (2) not the individual's spouse[ or domestic partner], parent, sibling, child, or  
7 grandchild; and

8 (3) present when the individual signed the power of attorney or when the  
9 individual represented that the power of attorney reflects the individual's wishes.

10 (c) The witness under subsection (b) shall be considered present if the witness and the  
11 individual are:

12 (1) present with each other in the same physical space;

13 (2) able to interact with each other in real time through the use of audiovisual  
14 technology now known or later developed; or

15 (3) able to speak to and hear each other in real time through telephonic interaction  
16 when:

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

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

20 (d) A power of attorney for health care may include a health-care instruction.

21 (e) The powers and duties of an agent under a power of attorney for health-care decisions  
22 commence when a determination is made under Section 4 that the individual who created the  
23 power of attorney lacks capacity. The powers and duties will cease if the individual revokes the

1 power of attorney or is subsequently determined to not lack capacity, or a challenge is made to  
2 the determination of lack of capacity under Section 5.

3 **Legislative Note:** *The state should insert the term used in the state for residential long-term care*  
4 *facilities in subsection (a) and wherever the term appears in this act.*

5  
6 *If the state recognizes domestic partnerships, include the bracketed language in subsection (b)(2)*  
7 *and wherever the term appears in this act.*

8  
9 **Section 8. Advance Health-Care Directive for Mental Health Care**

10 (a) An individual may create a health-care instruction or power of attorney for health care  
11 exclusively regarding mental health care for the individual.

12 (b) A health-care instruction for mental health care may include:

13 (1) a statement of the individual's general mental health care philosophy and  
14 objectives;

15 (2) the individual's specific wishes regarding the provision, withholding, or  
16 withdrawal of a form of mental health care, including:

17 (A) the individual's preferences regarding mental health-care  
18 professionals, programs, and facilities;

19 (B) consent to admission to a psychiatric facility for up to a specified  
20 number of days;

21 (C) a refusal to accept specific types of mental health care, including  
22 medications;

23 (D) the individual's preferences regarding medications;

24 (E) the individual's preferences regarding the means of crisis intervention;

25 and

1 (F) additional instructions or information concerning the individual's  
2 mental health care.

3 (c) A health care instruction exclusively regarding mental health care may be in the same  
4 record as a power of attorney for health care, including a power created exclusively regarding  
5 mental health care.

6 (d) Appointment by an individual of an agent exclusively authorized to make mental  
7 health-care decisions for the individual does not revoke a prior appointment of an agent under a  
8 power of attorney for health care to make other health-care decisions for the individual but does  
9 revoke the prior agent's power to make mental health-care decisions unless otherwise specified  
10 by the appointment. A power of attorney for health care created by an individual subsequent to  
11 appointment of an agent exclusively authorized to make mental health-care decisions does not  
12 revoke the prior appointment of the agent to make mental health-care decisions unless otherwise  
13 specified in the subsequent power of attorney for health care.

14 (e) An individual, knowingly and voluntarily, may elect in an advance directive for  
15 mental health care to:

16 (1) waive the right under Section 5(a)(2) to have the individual's challenge of a  
17 determination of lack of capacity to make health care decisions prevail in the absence of a court  
18 determination under Section 5(b); and

19 (2) waive the right under Section 10(b) to revoke an instruction for mental health  
20 care during a period in which the individual has been determined to lack capacity to make health  
21 care decisions.

22 (f) If an advance directive for mental health care includes a waiver under subsection (e),  
23 it must be signed and dated by, or at the direction of, the individual creating the directive in the

1 physical presence of at least two adult witnesses, who shall attest that the waiver is voluntary and  
2 knowing.

3 **Section 9. Optional Form**

4 **{Provided separately.}**

5 **Section 10. Default Surrogate**

6 (a) A default surrogate may make a health-care decision for an individual who lacks  
7 capacity to make health care decisions and for whom an agent or guardian has not been  
8 appointed or is not reasonably available.

9 (b) A member of the following classes, in descending order of priority, who is reasonably  
10 available may act as a default surrogate for the individual unless the individual has an advance  
11 health-care directive that indicates otherwise:

- 12 (1) an adult who the individual has designated;
- 13 (2) the individual's spouse [or domestic partner], unless legally separated;
- 14 (3) the individual's adult child or parent;
- 15 (4) the individual's adult sibling;
- 16 (5) the individual's adult grandchild or grandparent;
- 17 (6) the individual's adult stepchild who the individual actively parented during the  
18 stepchild's minor years and with whom the individual has an ongoing relationship; or
- 19 (7) an adult known to have routinely assisted the individual with decision- making  
20 support during the past six months.

21 (c) If none of the members of the classes listed in subsection (b) eligible to act as a  
22 default surrogate is reasonably available, an adult who has exhibited special care and concern for

1 the individual, who is familiar with the individual's personal values, and who is reasonably  
2 available may act as a default surrogate.

3 (d) A default surrogate shall communicate the default surrogate's assumption of authority  
4 as promptly as practicable to individuals specified in subsection (b) who can be readily  
5 contacted.

6 (e) If more than one member of a class assumes authority to act as a default surrogate and  
7 they do not agree on a health-care decision, a member of the class shall so inform the supervising  
8 health-care provider. The supervising health-care provider shall comply with the decision of a  
9 majority of the members of the class who have communicated their views to the provider. The  
10 following apply:

11 (1) If the supervising health-care provider is informed that the class is evenly  
12 divided concerning the health-care decision, the provider shall solicit the views of other members  
13 of the class who are reasonably available but have not yet communicated their views to the  
14 provider and comply with the decision of the majority who have communicated their views after  
15 such solicitation.

16 (2) If the class remains evenly divided after additional class members have  
17 provided their views, members of the next class in priority that are reasonably available and who  
18 are willing and able to assume authority to act as default surrogate may do so. In that event, the  
19 supervising health-care provider shall comply with the decision of the majority of the members  
20 in the two classes that have communicated their views to the provider.

21 (3) If the health-care provider is informed that the views of the members of the  
22 two classes remain evenly divided, those classes and all individuals having lower priority are  
23 disqualified from making the decision. In that event, the health-care decision shall be made as

1 provided in other law of this state regarding the treatment of an individual who has been  
2 determined to lack capacity under this [act] or other law of this state.

3 (g) A health-care decision made by a default surrogate is effective without judicial  
4 approval.

5 (h) An individual at any time may disqualify a potential default surrogate, including a  
6 member of the individual's family, from acting as a default surrogate. The disqualification may  
7 be communicated in a record signed by the individual or orally to the individual being  
8 disqualified, another individual or the supervising health-care provider. Disqualification of a  
9 default surrogate is effective even if made by an individual who has been found to lack capacity.

10 (i) A finding by a court that another individual poses a danger to an individual determined  
11 to lack capacity, whether or not the court has imposed a restraining order against the other  
12 individual, disqualifies the other individual from acting as a default surrogate for the individual  
13 determined to lack capacity.

14 (j) Unless related to an individual determined to lack capacity by blood, marriage, or  
15 adoption, a default surrogate may not be an owner, operator, or employee of [a residential long-  
16 term health-care institution] at which the individual is receiving care.

17 (k) A supervising health-care provider may require an individual claiming the authority to  
18 act as a default surrogate under this section to provide a declaration in a record under penalty of  
19 perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

20 **Section 11. Revocation of Advance Health-Care Directive**

21 (a) An individual who has not been determined to lack capacity may revoke the  
22 designation of an agent in a record signed by the individual, by orally informing the supervising

1 health-care provider, or by any other act that provides clear and convincing evidence of the  
2 individual's intent to revoke the designation.

3 (b) Unless waived under Section 8(d)(2), an individual may revoke a health-care  
4 instruction at any time and in any manner that communicates the individual's intent to revoke the  
5 instruction.

6 (c) An advance health-care directive that conflicts with a prior advance health-care  
7 directive revokes the prior directive to the extent of the conflict.

8 (d) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a  
9 prior appointment of a spouse [or domestic partner] as agent for an individual unless otherwise  
10 specified in the decree or in the individual's health-care directive appointing the agent.

11 (e) A finding by a court that another individual poses a danger to an individual  
12 determined to lack capacity, whether or not the court has imposed a restraining order against the  
13 other individual, disqualifies the other individual from acting as an agent for the individual  
14 determined to lack capacity.

15 (f) A health-care provider or surrogate who is informed of a revocation of an advance  
16 health-care directive or disqualification of an agent or default surrogate shall promptly  
17 communicate the fact of the revocation or disqualification to the supervising health-care provider  
18 and to {an administrator with responsibility for medical records} of the health-care institution in  
19 which the individual determined to lack capacity resides or is currently located.

20 **Section 12. Duties of Agent and Default Surrogate**

21 (a) An agent or default surrogate shall make a health-care decision in accordance with the  
22 instructions of the individual included in an advance health-care directive and other wishes of the  
23 individual to the extent known to the agent or default surrogate. If the instructions or wishes of

1 the individual regarding a health-care decision are not known by the agent or default surrogate,  
2 the agent or default surrogate shall make the decision in accordance with the agent's or default  
3 surrogate's determination of the individual's best interest.

4 (b) In determining the individual's best interest, an agent or default surrogate shall  
5 consider the individual's:

6 (1) personal values and preferences to the extent known to or reasonably  
7 ascertainable by the agent or default surrogate; and

8 (2) contemporaneous expressions, including nonverbal expressions.

9 **Section 13. Powers of Agent and Default Surrogate**

10 (a) An agent or default surrogate shall have the following powers if specifically  
11 authorized by an individual in an advance health-care directive:

12 (1) to apply for private health insurance or public benefits, including publicly  
13 funded health insurance;

14 (2) to consent to the individual's participation in basic medical research; and

15 (3) to consent to admission of the individual to a mental health-care institution.

16 (b) Unless otherwise specified in an advance health-care directive, a person authorized to  
17 make a health-care decision for an individual has the same rights as the individual to request,  
18 receive, examine, copy, and consent to the disclosure of medical or other health-care  
19 information.

1           **Section 14. Duties of Supervising Health-Care Provider, Health-Care Provider and**  
2 **Health-Care Institution**

3           (a) Before implementing a health-care decision made for an individual by a surrogate, a  
4 supervising health-care provider, if possible, shall promptly communicate to the individual the  
5 decision made and the identity of the person making the decision.

6           (b) A supervising health-care provider shall promptly reflect in an individual’s medical  
7 record the existence or revocation of an advance health-care directive for the individual, or the  
8 designation or disqualification of a surrogate for the individual, to the extent known by the  
9 provider. If evidence of the directive, revocation, designation or disqualification is in a record,  
10 the provider shall request a copy and upon receipt arrange for insertion and maintenance of the  
11 copy in the individual’s medical record.

12           (c) A health-care provider who makes or is informed of a determination that an individual  
13 lacks capacity or no longer lacks capacity, or that other circumstances exist that affect a health-  
14 care instruction or the authority of a surrogate, shall promptly reflect the determination or  
15 circumstance in the individual’s medical record. The provider shall also promptly communicate  
16 the determination or circumstance to the individual, if possible, and to any person authorized to  
17 make health-care decisions for the individual.

18           (d) Except as provided in subsections (e) and (f), a health-care provider or health-care  
19 institution providing health care to an individual shall comply with:

- 20                   (1) an instruction given by the individual regarding the individual’s health care;  
21                   (2) a reasonable interpretation of the instruction given by a person authorized to  
22 make health-care decisions for the individual; and

1                   (3) a health-care decision for the individual made by a person authorized to make  
2 health-care decisions for the individual to the same extent as if the decision had been made by  
3 the individual at a time when the individual was not determined to lack capacity.

4                   (e) A health-care provider or a health-care institution may refuse to implement the terms  
5 of a health-care instruction or health-care decision:

6                   (1) for reasons of conscience of the provider;

7                   (2) because the instruction or decision is contrary to a policy of the institution  
8 which is expressly based on reasons of conscience and the policy was timely communicated to  
9 the individual who gave the instruction or about whom the decision was to be made or to a  
10 person authorized to make health-care decisions for the individual; or

11                   (3) compliance would:

12                   (A) require the provision of medically ineffective health care or health  
13 care contrary to generally accepted health-care standards applicable to the health-care provider or  
14 health-care institution;

15                   (B) require the use of a form of care or treatment that is not available to  
16 the provider or institution; or

17                   (C) violate a court order or other law.

18                   (f) A health-care provider or health-care institution that refuses to implement an  
19 instruction or decision under subsection (e) shall:

20                   (1) promptly inform the individual, if possible, and any person authorized to make  
21 health-care decisions for the individual of the refusal;

22                   (2) unless the individual or person authorized to make health-care decisions for  
23 the individual refuses assistance, immediately make all reasonable efforts to assist in the transfer

1 of the individual to another health-care provider or health-care institution that is willing to  
2 comply with the instruction or decision; and

3 (3) provide continuing care to the individual until a transfer under paragraph (2) is  
4 made.

5 (g) A health-care provider or health-care institution may not require or prohibit the  
6 creation or revocation of an advance health-care directive as a condition for providing health care  
7 to an individual.

### 8 **Section 15. Decisions by Guardian**

9 (a) A guardian shall comply with the instructions of the individual subject to guardianship  
10 and may not revoke the individual's advance health-care directive unless the court appointing the  
11 guardian expressly authorizes the noncompliance or revocation.

12 (b) A health-care decision made by an agent appointed by an individual subject to  
13 guardianship prevails over the decision of the guardian appointed for the individual unless a  
14 court orders otherwise.

15 (c) A health-care decision made by a guardian for an individual subject to guardianship is  
16 effective without judicial approval.

### 17 **Section 16. Immunities**

18 (a) A health-care provider, supervising health-care provider, or health-care institution  
19 acting in good faith and in accordance with generally accepted health-care standards applicable  
20 to the provider or institution is not subject to civil or criminal liability or to discipline for  
21 unprofessional conduct for:

22 (1) complying with a health-care decision of a person having apparent authority to  
23 make the decision for an individual, including a decision to withhold or withdraw health care;

1 (2) refusing to comply with a health-care decision of a person based on a  
2 reasonable belief that the person lacked authority to make the decision; or

3 (3) complying with an advance health-care directive that the provider or  
4 institution reasonably believes was valid when created and reasonably believes has not been  
5 revoked by the individual who created the directive or by a court.

6 (b) An agent or default surrogate is not subject to civil or criminal liability or to discipline  
7 for unprofessional conduct for a health-care decision made under this [act] in good faith.

8 **Section 17. Prohibited Conduct; Damages**

9 (a) A person may not:

10 (1) intentionally falsify, forge, conceal, deface or obliterate an advance health-care  
11 directive or revocation of an advance health-care directive without the consent of the individual  
12 who created the directive or revocation of the directive;

13 (2) coerce or fraudulently induce an individual to create, revoke or refrain from  
14 creating or revoking an advance health-care directive; or

15 (3) intentionally withhold personal knowledge of the existence or revocation of an  
16 advance health-care directive from a supervising health care provider or health-care institution at  
17 which the individual is receiving care.

18 (b) An aggrieved individual has a cause of action against a person that violates subsection

19 (a) for damages in the amount of \$[5,000] or actual damages resulting from the violation,  
20 whichever is greater.

21 (c) In an action under this section, a prevailing plaintiff may also recover reasonable  
22 attorney's fees, court costs, and other reasonable litigation expenses.

23 (d) This section does not preclude other remedies available under other law.

1           **Section 18. Effect of Copy**

2           A copy of an advance health-care directive, revocation of an advance health-care  
3 directive or designation or disqualification of a surrogate in a record has the same effect as the  
4 original.

5           **Section 19. Construction**

6           (a) Death of an individual resulting from the withholding or withdrawal of health care in  
7 accordance with this [act] does not constitute a suicide or homicide or legally impair or  
8 invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any  
9 term of the policy or annuity to the contrary.

10          (b) This [act] does not authorize mercy killing, assisted suicide, euthanasia, or the  
11 provision, withholding, or withdrawal of health care, to the extent prohibited by other law of this  
12 state.

13          (c) This [act] does not authorize or require a health-care provider, a supervising health-  
14 care provider, or health-care institution to provide health care contrary to generally accepted  
15 health-care standards applicable to the provider or institution.

16           **Section 20. Judicial relief**

17          (a) The court may enjoin or order the implementation of a health-care decision made on  
18 behalf of an individual or order other equitable relief on petition of:

19                 (1) the individual;

20                 (2) the individual’s surrogate;

21                 (3) a health-care provider, supervising health-care provider, or health-care  
22 institution, involved with the individual’s care; or

23                 (4) another person interested in the welfare of the individual.

1 (b) A proceeding under this section is governed by [cite to the state’s rules of procedure  
2 or statutory provisions governing expedited proceedings and proceedings affecting persons  
3 determined to lack capacity].

4 **Section 21. Uniformity of Application and Construction**

5 In applying and construing this uniform act, a court shall consider the promotion of  
6 uniformity of the law among jurisdictions that enact it.

7 **Section 22. Relation to Electronic Signatures in Global and National Commerce Act**

8 This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National  
9 Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit or  
10 supersede Section 7001(c), or authorize electronic delivery of any of the notices described in  
11 Section 7003(b).

12 *Legislative Note: It is the intent of this act to incorporate future amendments to the cited federal*  
13 *law. A state in which the constitution or other law does not permit incorporation of future*  
14 *amendments when a federal statute is incorporated into state law should omit the phrase “, as*  
15 *amended”. A state in which, in the absence of a legislative declaration, future amendments are*  
16 *incorporated into state law also should omit the phrase.*

17  
18 **Section 23. Saving Provision**

19 This [act] does not affect the validity of a health-care advance directive made before [the  
20 effective date of this [act]].

21 **[Section 24. Severability.**

22 If a provision of this [act] or its application to a person or circumstance is held invalid,  
23 the invalidity does not affect another provision or application that can be given effect without the  
24 invalid provision.]

25 *Legislative Note: Include this section only if the state lacks a general severability statute or a*  
26 *decision by the highest court of the state stating a general rule of severability.*

27  
28 **Section 25. Repeals; Conforming Amendments**

1 (a) The [cite to Uniform Health-Care Decisions Act] is repealed.

2 (b) . . .

3 **Legislative Note:** *A state that has enacted the Uniform Health-Care Decisions Act or*  
4 *comparable statute should repeal it.*

5

6 *A state should examine its statutes to determine whether conforming revisions are required by*  
7 *this act.*

8

9 **Section 26. Effective date**

10 This [Act] takes effect . . .