



WHY YOUR STATE SHOULD ADOPT THE UNIFORM HEALTH-CARE DECISIONS ACT

The Uniform Health-Care Decisions Act (“UHCDCA”) enables individuals to appoint agents to make health care decisions for them should they become unable to make those decisions for themselves, to provide their health-care professionals and agents with instructions about their values and priorities regarding their health care, and to indicate particular medical treatment they do or do not wish to receive. It also authorizes certain people to make health-care decisions for individuals incapable of making their own decisions but who have not appointed agents, thus avoiding the need to appoint a guardian or otherwise involve a court in most situations. In addition, it sets forth the related duties and powers of agents and health-care professionals, and provides protection in the form of immunity to both under specified circumstances.

Like the 1993 Act that preceded it, the Act’s goals include: (1) acknowledging the right of a competent individual to make decisions about the provision, withdrawal or withholding of health care; (2) providing a single statute to govern both the appointment of a health-care agent and the recording of an individual’s wishes regarding their health care; (3) simplifying and facilitating the making of an advance health-care directive; (4) ensuring that decisions about an individual’s health care will be governed, to the extent possible, by the individual’s own desires; (5) addressing compliance with an individual’s instructions by health-care institutions and professionals; and (6) providing a procedure for resolution of disputes.

Some of the key benefits of the act are that it:

Reduces unnecessary barriers to the execution of advance directives: By making it easier to create an advance directive, the Act seeks to reduce the number of Americans who lack an advance directive. The Act also authorizes the use of mental health care, or psychiatric, advance directives in a way that helps resolve conflicts between competing advance directives.

Clarifies when agents may act: The Act adds provisions clearly indicating when a surrogate’s power commences and addresses what happens if a patient objects to a surrogate making a decision for them. It also allows an individual to specifically authorize their appointed agent to obtain health information while the individual has capacity, thus allowing the agent to assist the individual in making health-care decisions.

Includes a new optional form: The revised form is designed to be readily understandable and accessible to diverse populations. Unlike more traditional forms, it creates an opportunity not only for individuals to provide instructions about specific treatment preferences, but to also share information about their broader goals and values to help guide future health-care decisions.

Clarifies agents’ powers and gives individuals the option to authorize special powers. For example, to reduce the likelihood that an individual’s health-care needs will go unmet due to financial barriers, the Act authorizes a surrogate to apply for health insurance for a patient who does not have another fiduciary authorized to do so. It also provides that an agent has only those powers that are expressly authorized in the power of attorney that appointed the agent.

Modernizes default surrogate provisions: The Act updates the priority list in the 1993 Act to reflect a broader array of relationships, family structures, and living arrangements.

Brings the definition of capacity and approaches to capacity determinations in line with modern practice:

A surrogate's authority to make health-care decisions for a patient typically commences when the patient lacks capacity to make decisions for themselves. The Act modernizes the definition of capacity to focus on an individual's *functional* abilities and clarifies that an individual may lack capacity to make one decision yet retain capacity to make others. The Act also expands the list of health-care professionals who may determine that an individual lacks capacity.

For further information about the Uniform Health-Care Decisions Act, please contact Legislative Counsel Haley Tanzman at (312) 450-6620 or htanzman@uniformlaws.org.