

September 19, 2023

# The New Uniform Health Care Decisions Act: An Overview

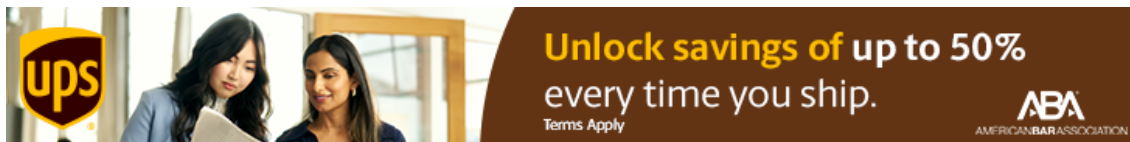
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In July, the Uniform Law Commission approved the new Uniform Health Care Decisions Act. The Act governs advance directives, including powers of attorney for health care in which an individual appoints an agent to make health care decisions for them if they become unable to make those decisions for themselves, and health-care instructions to let health-care professionals and agents know what care they want, their priorities for health care, and the values they want to guide health-care decisions made for them. It also authorizes certain people to make health-care decisions for individuals who cannot make their own decisions and have not appointed an agent to do so. In addition, the Act establishes certain duties and powers of health-care agents and professionals and shields them from liability if they act reasonably and in good faith.



The Act modernizes and expands on the Uniform Health-Care Decisions Act approved by the Uniform Law Commission (“ULC”) in 1993. In building on the earlier Act, it takes advantage of two decades of experience with—and research on—health-care decision-making. Seven key improvements are perhaps particularly notable.

- 1 One is that the Act includes provisions to make it easier for people to create and use advance directives. For example, it allows for remote witnessing of a power-of-attorney for health-care, something the COVID-19 pandemic revealed to be much-needed. Making it easier to execute advance directives is important, however, regardless of whether there is a pandemic. Advance directives increase the likelihood that an individual's wishes regarding health care will be honored and make it easier for family and friends to make difficult decisions about care.
- 2 A second key improvement is that the Act clarifies when a surrogate may make health-care decisions for a patient. As part of this, it sets forth a clear capacity standard for determining when an individual lacks capacity to make health-care decisions. This standard reflects a modern approach that focuses on the person's functional abilities and considers whether the person could make the decision with support. Relatedly, recognizing that a variety of health-care professionals may have training and expertise in assessing capacity, it expands the list of health-care professionals authorized to make a capacity determination.
- 3 A third improvement is that the Act sets forth what happens if a patient objects to a determination of incapacity. Most state statutes do not address this situation. However, creating a process to enable effective objections is critical to protect patients' civil rights.
- 4 A fourth advancement is to authorize the use of advance directives exclusively for mental health care. In the years since the 1993 Act was promulgated, many states have authorized this type of directive (called a "mental health advance directive" in the Act but elsewhere often referred to as a "psychiatric advance directive"). The Act enables individuals to provide specific instructions as to their preferences for mental health care or appoint an agent just for this type of decision. As part of its provisions governing mental health advance directives, the Act also enables individuals to limit their ability to revoke an advance directive when experiencing an acute mental health event.

- 5 Fifth, like its predecessor, the Act facilitates decisions for a person who lacks capacity but who does not have a valid power of attorney for health care. However, the new Act expands the list of who may serve as such a “default surrogate” to reflect a wider array of relationships and family structures.
- 6 Sixth, the Act creates a clear list of powers and duties for surrogates. In addition to setting forth traditional duties and powers, it enables a health care surrogate to apply for health care insurance for a patient who does not have any other fiduciary who is authorized to do so. It also makes it clear that an agent only has certain controversial powers if those powers are explicitly authorized in the power of attorney for health care appointing the agent.
- 7 Finally, the Act includes a model form that is designed to work well for diverse populations. One advantage of the form is that it is in plain language, which is especially valuable because many people create advance directives without the help of a trained professional. Another advantage is that it allows individuals to indicate not only preferences for specific types of care, but also to identify goals and values that they wish to have guide future health care decisions. In doing so, it addresses concerns that instructions that focus on particular treatments fail to provide agents and health-care providers with information about patients’ goals and values that could be used to make value-congruent decisions when unanticipated situations arise. Notably, the form is already proving popular: Nevada enacted a version of it in Spring 2023.

Of course, the impact of the Act will depend on the extent to which it is adopted by the States. The critical next step is for those who care about respecting patient wishes, and facilitating effective health-care decision-making, to advocate for its adoption in the states.

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