

Memorandum

To: Drafting Committee for the Interjurisdictional Recognition of Substitute Decision-Making Documents Act

From: Linda S. Whitton, Reporter

Re: Proposed Revisions for Consideration at the December 6, 2013 Drafting Committee Meeting

Date: Nov. 18, 2013

The attached draft reflects proposed revisions to the IRSDDA based on comments received at the 2013 National Conference of Commissioners on Uniform State Laws. Proposed changes are indicated in bold face type. The following is an outline of those revisions:

1. Clarification in the Prefatory Note that the Act does not apply to advance directions such as living will declarations and do-not-resuscitate orders
2. Reinsertion of the definition of “good faith” (several comments expressed concern that without the definition the term might be interpreted to require commercial reasonableness or a duty of inquiry into reasonably available information)
3. Clarification of the definition of “health care” to include the withholding or termination of care, treatment, service, or procedure
4. Clarification that “jurisdiction” includes a federally recognized Indian tribe and a subdivision of a foreign country
5. Clarification that “personal care” includes assistance with the activities of daily living
6. Clarification of the term “substitute decision-making document” with examples: a power of attorney, proxy, and representation agreement
7. Bifurcation of the portability standard in Section 3 to distinguish substitute decision-making documents for property decisions from those for health care or personal care (this revision creates consistency between IRSDDA and both the Uniform Power of Attorney Act and the Uniform Health-Care Decisions Act; this approach also better reflects the trends in state law reform)
8. Addition to Section 6(b) of the following basis for refusing a substitute decision-making document without liability: “the person would not otherwise be required in the same circumstances to act if requested by the individual who executed the substitute decision-making document”