

Uniform Health-Care Decisions Act*

Drafted by the

Uniform Law Commission

and by it

Approved and Recommended for Enactment
in All the States

at its

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Without Prefatory Note and Comments



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**The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws*

Uniform Health-Care Decisions Act (2023)

Section 1. Title

This [act] may be cited as the Uniform Health-Care Decisions Act (2023).

Section 2. Definitions

In this [act]:

(1) “Advance health-care directive” means a power of attorney for health care, health-care instruction, or both. The term includes an advance mental health-care directive.

(2) “Advance mental health-care directive” means a power of attorney for health care or health-care instruction, or both, created under Section 9.

(3) “Agent” means an individual appointed in a power of attorney for health care to make a health-care decision for the individual who made the appointment. The term includes a co-agent or alternate agent appointed under Section 20.

(4) “Capacity” has the meaning in Section 3.

(5) “Cohabitant” means each of two individuals who have been living together as a couple for at least one year after each became an adult or was emancipated and who are not married to each other[or are not [domestic partners] with each other].

(6) “Default surrogate” means an individual authorized under Section 12 to make a health-care decision for another individual.

(7) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) “Family member” means a spouse,[domestic partner,] adult child, parent, or grandparent, or an adult descendant of a spouse,[domestic partner,] child, parent, or grandparent.

(9) “Guardian” means a person appointed under other law by a court to make

decisions regarding the personal affairs of an individual, which may include health-care decisions. The term does not include a guardian ad litem.

(10) “Health care” means care or treatment or a service or procedure to maintain, monitor, diagnose, or otherwise affect an individual’s physical or mental illness, injury, or condition. The term includes mental health care.

(11) “Health-care decision” means a decision made by an individual or the individual’s surrogate regarding the individual’s health care, including:

(A) selection or discharge of a health-care professional or health-care institution;

(B) approval or disapproval of a diagnostic test, surgical procedure, medication, therapeutic intervention, or other health care; and

(C) direction to provide, withhold, or withdraw artificial nutrition or hydration, mechanical ventilation, or other health care.

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

(13) “Health-care instruction” means a direction, whether or not in a record, made by an individual that indicates the individual’s goals, preferences, or wishes concerning the provision, withholding, or withdrawal of health care. The term includes a direction intended to be effective if specified conditions arise.

(14) “Health-care professional” means a physician or other individual licensed, certified, or otherwise authorized or permitted by other law of this state to provide health care in this state in the ordinary course of business or the practice of the physician’s or individual’s

profession.

(15) “Individual” means an adult or emancipated minor.

(16) “Mental health care” means care or treatment or a service or procedure to maintain, monitor, diagnose, or otherwise affect an individual’s mental illness or other psychiatric, psychological, or psychosocial condition.

(17) “Nursing home” means a nursing facility as defined in 42 U.S.C. Section 1396r(a)(1)[, as amended] or skilled nursing facility as defined in 42 U.S.C. Section 1395i–3(a)(1)[, as amended].

(18) “Person” means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(19) “Person interested in the welfare of the individual” means:

(A) the individual’s surrogate;

(B) a family member of the individual;

(C) the cohabitant of the individual;

(D) a public entity providing health care case management or protective services to the individual;

(E) a person appointed under other law to make decisions for the individual under a power of attorney for finances; or

(F) a person that has an ongoing personal or professional relationship with the individual, including a person that has provided educational or health-care services or supported decision making to the individual.

(20) “Physician” means an individual authorized to practice medicine under [cite to state law authorizing the practice of medicine][or osteopathy under [cite to state law

authorizing the practice of osteopathy]].

(21) “Power of attorney for health care” means a record in which an individual grants an agent the authority to make health-care decisions for the individual.

(22) “Reasonably available” means being able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of an individual’s health-care situation. When used to refer to an agent or default surrogate, the term includes being willing and able to comply with the duties under Section 17 in a timely manner considering the urgency of an individual’s health-care situation.

(23) “Record” means information:

(A) inscribed on a tangible medium; or

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

(24) “Responsible health-care professional” means:

(A) a health-care professional designated by an individual or the individual’s surrogate to have primary responsibility for the individual’s health care or for overseeing a course of treatment; or

(B) in the absence of a designation under subparagraph (A), or if the professional designated under subparagraph (A) is not reasonably available, a health-care professional who has primary responsibility for overseeing the individual’s health care or for overseeing a course of treatment.

(25) “Sign” means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol,

sound, or process.

(26) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(27) “Supported decision making” means assistance, from one or more persons of an individual’s choosing, that helps the individual make or communicate a decision, including by helping the individual understand the nature and consequences of the decision.

(28) “Surrogate” means:

(A) an agent;

(B) a default surrogate; or

(C) a guardian authorized to make health-care decisions.

Legislative Note: *If the state recognizes domestic partnerships or civil unions, insert the term used in the state in the bracketed text in paragraphs (5) and (8), and wherever the term appears in this act. If the state does not recognize domestic partnerships, delete the bracketed text.*

It is the intent of this act to incorporate future amendments to the federal law cited in paragraph (17). A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase “as amended.” A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.

If the state has separate terms for and laws authorizing the practice of medicine and osteopathy, remove the brackets in paragraph (20) and cite to the appropriate statutes. However, if the practice of osteopathy in the state is included in the term “medicine” and is authorized by the state’s law regarding the practice of medicine, the bracketed text related to osteopathy should be deleted.

Section 3. Capacity

(a) An individual has capacity for the purpose of this [act] if the individual:

(1) is able and willing to communicate a decision independently or with appropriate services, technological assistance, supported decision making, or other reasonable

accommodation; and

(2) in making or revoking:

(A) a health-care decision, understands the nature and consequences of the decision, including the primary risks and benefits of the decision;

(B) a health-care instruction, understands the nature and consequences of the instruction, including the primary risks and benefits of the choices expressed in the instruction; and

(C) an appointment of an agent under a health-care power of attorney or identifying a default surrogate under Section 12(b)(1), recognizes the identity of the individual being appointed or identified and understands the general nature of the relationship of the individual making the appointment or identification with the individual being appointed or identified.

(b) The right of an individual who has capacity to make a decision about the individual's own health care is not affected by whether the individual creates or revokes an advance health-care directive.

Section 4. Presumption of Capacity; Overcoming Presumption

(a) An individual is presumed to have capacity to make a health-care decision, make or revoke a health-care instruction, and make or revoke a power of attorney for health care unless:

(1) a court has found that the individual lacks capacity to do so; or

(2) the presumption is rebutted under subsection (b).

(b) Subject to Sections 5 and 6, a presumption under subsection (a) may be rebutted by a finding that an individual lacks capacity:

(1) subject to subsection (c), made on the basis of a contemporaneous

examination by any of the following:

(A) a physician;

(B) a psychologist licensed or otherwise authorized to practice in this

state; [or]

[(C) an individual with training and expertise in the finding of lack of

capacity who is licensed or otherwise authorized to practice in this state as:

(i) a physician assistant;

(ii) an advanced practice registered nurse; or

(iii) a social worker; or]

(D) a responsible health-care professional not described in subparagraph

(A)[,] [or] (B)[, or (C)] if:

(i) the individual about whom the finding is to be made is experiencing a health condition requiring that a decision regarding health-care treatment be made promptly to avoid loss of life or serious harm to the health of the individual; and

(ii) an individual listed in subparagraph (A)[,] [or] (B)[, or (C)] is not reasonably available;

(2) made in accordance with accepted standards of the profession and the scope of practice of the individual making the finding and to a reasonable degree of certainty; and

(3) documented in a record signed by the individual making the finding that includes an opinion of the cause, nature, extent, and probable duration of the lack of capacity.

(c) The following individuals may not make the finding under subsection (b):

(1) a family member of the individual presumed to have capacity;

(2) the cohabitant of the individual or a descendant of the cohabitant; or

(3) the individual's surrogate, a family member of the surrogate, or a descendant of the surrogate.

(d) If the finding under subsection (b) was based on a condition the individual no longer has or a responsible health-care professional subsequently has good cause to believe the individual has capacity, the individual is presumed to have capacity unless a court finds the individual lacks capacity or the presumption is rebutted under subsection (b).

Legislative Note: *If the state decides to include physician assistants, advanced practice registered nurses, and social workers in the list of health professionals who may make a finding that an individual lacks capacity even in a non-emergency situation, it should include bracketed subsection (b)(1)(C) and include reference to paragraph (C) in subsection (b)(1)(D).*

Section 5. Notice of Finding of Lack of Capacity; Right to Object

(a) An individual who makes a finding under Section 4(b), as soon as reasonably feasible, shall inform the individual about whom the finding was made or the individual's responsible health-care professional of the finding.

(b) A responsible health-care professional who is informed of a finding under Section 4(b), as soon as reasonably feasible, shall inform the individual about whom the finding was made and the individual's surrogate.

(c) An individual found under Section 4(b) to lack capacity may object to the finding by orally informing a responsible health-care professional, in a record provided to a responsible health-care professional or the health-care institution in which the individual resides or is receiving care, or by another act that clearly indicates the individual's objection.

(d) If the individual objects under subsection (c), the finding under Section 4(b) is not sufficient to rebut the presumption of capacity in Section 4(a), and the individual must be treated as having capacity, unless:

(1) the individual withdraws the objection;

(2) a court finds that the individual lacks the presumed capacity;

(3) the individual is experiencing a health condition requiring that a decision regarding health-care treatment be made promptly to avoid imminent loss of life or serious harm to the health of the individual; or

(4) subject to subsection (e), the finding is confirmed by a second finding made by an individual authorized under Section 4(b)(1) who:

(A) did not make the first finding;

(B) is not a family member of the individual who made the first finding;

and

(C) is not the cohabitant of the individual who made the first finding or a descendant of the cohabitant.

(e) A second finding that the individual lacks capacity under subsection (d)(4) is not sufficient to rebut the presumption of capacity if the individual is requesting the provision or continuation of life-sustaining treatment and the finding is being used to make a decision to withhold or withdraw the treatment.

(f) A health-care professional who is informed of an objection under subsection (c), as soon as reasonably feasible, shall:

(1) communicate the objection to a responsible health-care professional; and

(2) document the objection and the date of the objection in the individual's medical record or communicate the objection and the date of the objection to an administrator with responsibility for medical records of the health-care institution providing health care to the individual, who shall document the objection and the date of the objection in the individual's medical record.

Section 6. Judicial Review of Finding of Lack of Capacity

(a) An individual found under Section 4(b) to lack capacity, a responsible health-care professional, the health-care institution providing health care to the individual, or a person interested in the welfare of the individual may petition the [insert name of the appropriate court in the state for capacity cases] in the [county] in which the individual resides or is located to determine whether the individual lacks capacity.

(b) The court in which a petition under subsection (a) is filed shall appoint [legal counsel to represent the individual if the individual does not have legal counsel] [a guardian ad litem]. The court shall hear the petition [as soon as possible but not later than [seven] days after the petition is filed]. As soon as possible[, but not later than [seven] days after the hearing], the court shall determine whether the individual lacks capacity. The court may determine that the individual lacks capacity only if the court finds by clear and convincing evidence that the individual lacks capacity.

Legislative Note: *A state that uses a different term for “county” should insert that term in the brackets in subsection (a).*

In subsection (b), the state should decide whether to require the appointment of legal counsel, if the individual does not have legal counsel, or a guardian ad litem. The former’s duty is to represent the individual and the individual’s wishes before the court; the latter’s is to assist the court by representing the individual’s best interest.

A state in which court proceedings are solely or primarily within the purview of the state’s highest court may not wish to include the bracketed instructions to the court in subsection (b) regarding the timing of a hearing on a petition under subsection (a). A state in which that is not the case should include the bracketed material and insert an appropriate number of days.

Section 7. Health-Care Instruction

(a) An individual may create a health-care instruction that expresses the individual’s preferences for future health care, including preferences regarding:

(1) health-care professionals or health-care institutions;

- (2) how a health-care decision will be made and communicated;
 - (3) persons that should or should not be consulted regarding a health-care decision;
 - (4) a person to serve as guardian for the individual if one is appointed; and
 - (5) an individual to serve as a default surrogate.
- (b) A health-care professional to whom an individual communicates or provides an instruction under subsection (a) shall document the instruction and the date of the instruction in the individual's medical record or communicate the instruction and date of the instruction to an administrator with responsibility for medical records of the health-care institution providing health care to the individual, who shall document the instruction and the date of the instruction in the individual's medical record.
- (c) A health-care instruction made by an individual that conflicts with an earlier health-care instruction made by the individual, including an instruction documented in a medical order, revokes the earlier instruction to the extent of the conflict.
- (d) A health-care instruction may be in the same record as a power of attorney for health care.

Section 8. Power of Attorney for Health Care

- (a) An individual may create a power of attorney for health care to appoint an agent to make health-care decisions for the individual.
- (b) An individual is disqualified from acting as agent for an individual who lacks capacity to make health-care decisions if:
- (1) a court finds that the potential agent poses a danger to the individual's well being, even if the court does not issue a [restraining order] against the potential agent; or

(2) the potential agent is an owner, operator, employee, or contractor of a nursing home [or other residential care facility] in which the individual resides or is receiving care unless the owner, operator, employee, or contractor is a family member of the individual, the cohabitant of the individual, or a descendant of the cohabitant.

(c) A health-care decision made by an agent is effective without judicial approval.

(d) A power of attorney for health care must be in a record, signed by the individual creating the power, and signed by an adult witness who:

(1) reasonably believes the act of the individual to create the power of attorney is voluntary and knowing;

(2) is not:

(A) the agent appointed by the individual;

(B) the agent's spouse[, domestic partner,] or cohabitant;

(C) if the individual resides or is receiving care in a nursing home[or other residential care facility], the owner, operator, employee, or contractor of the nursing home [or other residential care facility]; and

(3) is present when the individual signs the power of attorney or when the individual represents that the power of attorney reflects the individual's wishes.

(e) A witness under subsection (d) is considered present if the witness and the individual are:

(1) physically present in the same location;

(2) using electronic means that allow for real time audio and visual transmission and communication in real time to the same extent as if the witness and the individual were physically present in the same location; or

(3) able to speak to and hear each other in real time through audio connection if:

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

(B) the witness is able to authenticate the identity of the individual by

receiving accurate answers from the individual that enable the authentication.

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

Legislative Note: *A state should insert the term the state uses for a protective order in place of the bracketed text in subsection (b)(2) and wherever it appears in the act.*

A state should insert the appropriate term or terms for the types of facilities the state wishes to include in subsection (b) and wherever the bracketed phrase “other residential care facility” appears in the act. These facilities are referred to by various names, including assisted living facilities and board and care homes.

It is the intent of this act that a power of attorney under this act prevails over a conflicting provision in other state law. A state may need to revise its law on powers of attorney to resolve conflicts.

Section 9. Advance Mental Health-Care Directive

(a) An individual may create an advance health-care directive that addresses only mental health care for the individual. The directive may include a health-care instruction, a power of attorney for health care, or both.

(b) A health-care instruction under this section may include:

(1) a statement of the individual’s general philosophy and objectives regarding mental health care;

(2) the individual’s specific goals, preferences, and wishes regarding the provision, withholding, or withdrawal of a form of mental health care, including:

(A) preferences regarding professionals, programs, and facilities;

(B) admission to a mental facility, including duration of admission;

(C) preferences regarding medications;

(D) a refusal to accept a specific type of mental health care, including a medication; and

(E) preferences regarding crisis intervention.

(c) A power of attorney for health care under this section may appoint an agent to make decisions only for mental health care.

[(d) An individual may direct in an advance mental health-care directive that if the individual is experiencing a psychiatric or psychological event specified in the directive the individual may not revoke the directive or a part of the directive.

(e) If an advance mental health-care directive includes a direction under subsection (d), the advance mental health-care directive must be in a record that is separate from any other advance health-care directive created by the individual, and signed by the individual creating the advance mental health-care directive and at least two adult witnesses who:

(1) attest that to the best of their knowledge the individual:

(A) understood the nature and consequences of the direction, including its risks and benefits; and

(B) made the direction voluntarily and without coercion or undue influence;

(2) are not:

(A) the agent appointed by the individual;

(B) the agent's spouse[, domestic partner,] or cohabitant; and

(C) if the individual resides in a nursing home [or other residential care facility] the owner, operator, employee, or contractor of the nursing home [or other residential care facility]; and

(3) are physically present in the same location as the individual.]

Legislative Note: *A state that wishes to include an option to allow an individual to waive the individual's right to revoke an advance mental health-care directive (a "Ulysses clause") should include subsections (d) and (e), Section 15(a)(3) and Section 23(a)(6).*

Section 10. Relationship of Advance Mental Health-Care Directive and Other

Advance Health-Care Directive

(a) If a direction in an advance mental health-care directive conflicts with a direction in another advance health-care directive, the later direction revokes the earlier direction to the extent of the conflict.

(b) An individual's appointment under a power of attorney for health care of an agent to make decisions only for mental health care does not revoke an earlier appointment of an agent under a power of attorney for health care to make other health-care decisions for the individual. A later appointment revokes the authority of an agent under the earlier appointment to make decisions about mental health care unless otherwise specified in the power of attorney making the later appointment.

(c) An individual's appointment under a power of attorney for health care of an agent to make health-care decisions for the individual other than decisions about mental health care made after appointment of an agent authorized to make only mental health-care decisions, does not revoke the appointment of the agent authorized to make only mental health-care decisions.

Section 11. Optional Form

The following form may be used to create an advance health-care directive.

ADVANCE HEALTH-CARE DIRECTIVE

HOW YOU CAN USE THIS FORM

You can use this form if you wish to name someone to make health-care decisions for you in case you cannot make decisions for yourself. This is called giving the person a power of attorney for

health care. This person is called your Agent.

You can also use this form to state your wishes, preferences, and goals for health care, and to say if you want to be an organ donor after you die.

YOUR NAME AND DATE OF BIRTH

Name:

Date of birth:

PART A: NAMING AN AGENT

This part lets you name someone else to make health-care decisions for you. You may leave any item blank.

1. NAMING AN AGENT

I want the following person to make health-care decisions for me if I cannot make decisions for myself:

Name:

Optional contact information (it is helpful to include information such as address, phone, and email):

2. NAMING AN ALTERNATE AGENT

I want the following person to make health-care decisions for me if I cannot and my Agent is not able or available to make them for me:

Name:

Optional contact information (it is helpful to include information such as address, phone, and email):

3. LIMITING YOUR AGENT'S AUTHORITY

I give my Agent the power to make all health-care decisions for me if I cannot make those decisions for myself, except the following:

(If you do not add a limitation here, your Agent will be able make all health-care decisions that an Agent is permitted to make under state law.)

PART B: HEALTH CARE INSTRUCTIONS

This part lets you state your priorities for health care and to state types of health care you do and do not want.

1. INSTRUCTIONS ABOUT LIFE-SUSTAINING TREATMENT

This section gives you the opportunity to say how you want your Agent to act while making decisions for you. You may mark or initial each item. You also may leave any item blank.

Treatment. Medical treatment needed to keep me alive but not needed for comfort or any other purpose should (mark or initial all that apply):

- ☐ Always be given to me. (If you mark or initial this preference, you should not mark or initial other preferences in the “treatment” section.).
- ☐ Not be given to me if I have a condition that is not curable and is expected to cause my death soon, even if treated.
- ☐ Not be given to me if I am unconscious and I am not expected to be conscious again.
- ☐ Not be given to me if I have a medical condition from which I am not expected to recover that prevents me from communicating with people I care about, caring for myself, and recognizing family and friends.
- ☐ Other (write what you want or do not want):

Food and liquids. If I can’t swallow and staying alive requires me to get food or liquids through a tube or other means for the rest of my life, then food or liquids should (mark or initial all that apply):

- ☐ Always be given to me. (If you mark or initial this preference, you should not mark or initial other preferences in the “food and liquids” section”).
- ☐ Not be given to me if I have a condition that is not curable and is expected to cause me to die soon, even if treated.
- ☐ Not be given to me if I am unconscious and am not expected to be conscious again.
- ☐ Not be given to me if I have a medical condition from which I am not expected to recover that prevents me from communicating with people I care about, caring for myself, and recognizing family and friends.
- ☐ Other (write what you want or do not want):

Pain relief. If I am in significant pain, care that will keep me comfortable but is likely to shorten my life should (mark or initial all that apply):

- ☐ Always be given to me. (If you mark or initial this preference, you should not mark or initial other preferences in the “pain relief” section.).
- ☐ Never be given to me. (If you mark or initial this preference, you should not mark or initial other preferences in the “pain relief” section.)
- ☐ Be given to me if I have a condition that is not curable and is expected to

- cause me to die soon, even if treated.
- ☐ Be given to me if I am unconscious and am not expected to be conscious again.
- ☐ Be given to me if I have a medical condition from which I am not expected to recover that prevents me from communicating with people I care about, caring for myself, and recognizing family and friends.
- ☐ Other (write what you want or do not want):

2. MY PRIORITIES

You can use this section to indicate what is important to you, and what is not important to you. This information can help your Agent make decisions for you if you cannot. It also helps others understand your preferences.

You may mark or initial each item. You also may leave any item blank.

Staying alive as long as possible even if I have substantial physical limitations is:

- ☐ Very important
- ☐ Somewhat important
- ☐ Not important

Staying alive as long as possible even if I have substantial mental limitations is:

- ☐ Very important
- ☐ Somewhat important
- ☐ Not important

Being free from significant pain is:

- ☐ Very important
- ☐ Somewhat important
- ☐ Not important

Being independent is:

- ☐ Very important
- ☐ Somewhat important
- ☐ Not important

Having my Agent talk with my family before making decisions about my care is:

- ☐ Very important
- ☐ Somewhat important
- ☐ Not important

Having my Agent talk with my friends before making decisions about my care is:

- ☐ Very important
- ☐ Somewhat important
- ☐ Not important

3. **OTHER INSTRUCTIONS**

You can use this section to provide more information about your goals, values, and preferences for treatment, including care you want or do not want. You can also use this section to name anyone who you do not want to make decisions for you under any conditions.

PART C: OPTIONAL SPECIAL POWERS & GUIDANCE

This part lets you give your Agent additional powers, and to provide more guidance about your wishes. You may mark or initial each item. You also may leave any item blank.

1. **OPTIONAL SPECIAL POWERS**

My Agent can do the following things **ONLY** if I have marked or initialed them below:

☐ Admit me as a voluntary patient to a facility for mental health treatment for up to 7 days, or 14 days, or 30 days (circle one).
(If I do not mark or initial this, my Agent **MAY NOT** admit me as a voluntary patient to this type of facility.)

☐ Place me in a nursing home for more than 100 days even if my needs can be met somewhere else, I am not terminally ill, and I object.
(If I do not mark or initial this, my Agent **MAY NOT** do this.)

2. **ACCESS TO MY HEALTH INFORMATION**

My Agent may obtain, examine, and share information about my health needs and health care if I am not able to make decisions for myself. If I mark or initial below, my Agent may also do that at any time my Agent thinks it will help me.

☐ I give my Agent permission to obtain, examine, and share information about my health needs and health care whenever they think it will help me.

3. **FLEXIBILITY FOR MY AGENT**

Mark or initial below if you want to give your Agent flexibility in following instructions you provide in this form. If you do not, your Agent must follow the instructions even if they think something else would be better for you.

☐ I give my Agent permission to be flexible in applying these instructions if my Agent thinks it would be in my best interest based on what my Agent knows about me.

4. **NOMINATION OF GUARDIAN**

Here you can say who you would want as your guardian if you needed one. A guardian is a person appointed by a court to make decisions for someone who cannot make decisions. Filling this out does NOT mean you want or need a guardian.

If a court appoints a guardian to make personal decisions for me, I want the court to choose:

(☐) My Agent named in this form. If my Agent cannot be a guardian, I want the Alternate Agent named in this form.

(☐) Other (write who you would want and their contact information):

PART D: ORGAN DONATION

This part lets you donate your organs after you die. You may leave any item blank.

1. DONATION

You may mark or initial one item.

(☐) I donate my organs, tissues, and other body parts after I die, even if it requires maintaining treatments that conflict with other instructions I have put in this form, EXCEPT for those I list below (list any body parts you do NOT want to donate):

(☐) I do not want my organs, tissues, or body parts donated to anybody for any reason.

2. PURPOSE OF DONATION

You may mark or initial all that apply. If you do not mark any, your donation can be used for all of the below purposes.

Organs, tissues, or body parts that I donate may be used for:

(☐) Transplant

(☐) Therapy

(☐) Research

(☐) Education

(☐) All of the above

PART E: SIGNATURES REQUIRED ON THIS FORM

YOUR SIGNATURE

Sign your name:

Today's date:

City/Town/Village and State (optional):

SIGNATURE OF A WITNESS

You need a witness if you are using this form to name an Agent. The witness must be an adult and cannot be the person you are naming as Agent or the Agent's spouse,[domestic partner,] or someone the Agent lives with as a couple. If you live or are receiving care in a nursing home, the witness cannot be an employee or contractor of the home or someone who owns or runs the home.

Witness's name:

Witness's signature:

Date witness signed:

(Only sign as a witness if you think that the person signing above is doing it voluntarily).

PART F: INFORMATION FOR AGENTS

1. If this form names you as an Agent, you can make decisions about health care for the person who named you when they cannot make their own.
2. If you make a decision for the person, follow any instructions the person gave, including any in this form.
3. If you do not know what the person would want, make the decision that you think is in the person's best interest. To figure out what is in the person's best interest, consider the person's values, preferences, and goals if you know them or can learn them. Some of these preferences may be in this form. You should also consider any behavior or communication from the person that indicates what the person currently wants.
4. If this form names you as an Agent, you can also get and share the individual's health information. But unless the person has said so in this form, you can get or share this information only when the person cannot make their own decisions about their health care.

Section 12. Default Surrogate

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

(b) Unless the individual has an advance health-care directive that indicates otherwise, a member of the following classes, in descending order of priority, who is reasonably available and not disqualified under Section 14, may act as a default surrogate for the individual:

(1) an adult who the individual has identified, other than in a power of attorney for health care, to make a health-care decision for the individual if the individual cannot make the decision;

(2) the individual's spouse[or domestic partner], unless:

(A) a petition for annulment, divorce, dissolution of marriage, legal separation, or termination has been filed and not dismissed or withdrawn;

(B) a decree of annulment, divorce, dissolution of marriage, legal separation, or termination has been issued;

(C) the individual and the spouse[or domestic partner] have agreed in a record to a legal separation; or

(D) the spouse[or domestic partner] has [abandoned] the individual for more than one year;

(3) the individual's adult child or parent;

(4) the individual's cohabitant;

(5) the individual's adult sibling;

(6) the individual's adult grandchild or grandparent;

(7) an adult not listed in paragraphs (1) through (6) who has assisted the individual with supported decision making routinely during the preceding six months;

(8) the individual's adult stepchild not listed in paragraphs (1) through (7) whom the individual actively parented during the stepchild's minor years and with whom the individual has an ongoing relationship; or

(9) an adult not listed in paragraphs (1) through (8) who has exhibited special care and concern for the individual and is familiar with the individual's personal values.

(c) A responsible health-care professional may require an individual who assumes authority to act as a default surrogate to provide a declaration in a record under penalty of perjury stating facts and circumstances reasonably sufficient to establish the authority.

(d) If a responsible health-care professional reasonably determines that an individual who assumed authority to act as a default surrogate is not willing or able to comply with a duty under Section 17 or fails to comply with the duty in a timely manner, the professional may recognize the individual next in priority under subsection (b) as the default surrogate.

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

Legislative Note: *A state should insert the term used in the state for abandonment in subsection (b)(2)(D) and wherever the term “abandoned” or “abandonment” appears in this act.*

Section 13. Disagreement Among Default Surrogates

(a) A default surrogate who assumes authority under Section 12 shall inform a responsible health-care professional if two or more members of a class under Section 12(b) have assumed authority to act as default surrogates and the members do not agree on a health-care decision.

(b) A responsible health-care professional shall comply with the decision of a majority of the members of the class with highest priority under Section 12(b) who have communicated their views to the professional and the professional reasonably believes are acting consistent with their duties under Section 17.

(c) If a responsible health-care professional is informed that the members of the class who have communicated their views to the professional are evenly divided concerning the health-care decision, the professional shall make a reasonable effort to solicit the views of other members of the class who are reasonably available but have not yet communicated their views to

the professional. The professional, after the solicitation, shall comply with the decision of a majority of the members who have communicated their views to the professional and the professional reasonably believes are acting consistent with their duties under Section 17.

(d) If the class remains evenly divided after the effort is made under subsection (c), the health-care decision must be made as provided by other law of this state regarding the treatment of an individual who is found to lack capacity.

Section 14. Disqualification to Act as Default Surrogate

(a) An individual for whom a health-care decision would be made may disqualify another individual from acting as default surrogate for the first individual. The disqualification must be in a record signed by the first individual or communicated verbally or nonverbally to the individual being disqualified, another individual, or a responsible health-care professional. Disqualification under this subsection is effective even if made by an individual who lacks capacity to make an advance directive if the individual clearly communicates a desire that the individual being disqualified not make health care decisions for the individual.

(b) An individual is disqualified from acting as a default surrogate for an individual who lacks capacity to make health-care decisions if:

(1) a court finds that the potential default surrogate poses a danger to the individual's well being, even if the court does not issue a [restraining order] against the potential surrogate;

(2) the potential default surrogate is an owner, operator, employee, or contractor of a nursing home [or other residential care facility] in which the individual is residing or receiving care unless the owner, operator, employee, or contractor is a family member of the individual, the cohabitant of the individual or a descendant of the cohabitant; or

(3) the potential default surrogate refuses to provide a timely declaration under Section 12(c).

Section 15. Revocation

(a) An individual may revoke the appointment of an agent under a power of attorney for health care, the designation of a default surrogate, or a health-care instruction in whole or in part, unless:

(1) a court finds the individual lacks capacity to do so; [or]

(2) the individual is found under Section 4(b) to lack capacity to do so and, if the individual objects to the finding, the finding is confirmed under Section 5(d)[; or

(3) the individual created an advance mental health-care directive that includes the provision under Section 9(d) and the individual is experiencing the psychiatric or psychological event specified in the directive].

(b) Revocation under subsection (a) may be by any act of the individual that clearly indicates that the individual intends to revoke the appointment, designation, or instruction, including an oral statement to a health-care professional.

(c) Except as provided in Section 10, an advance health-care directive that conflicts with an earlier advance health-care directive revokes the earlier directive to the extent of the conflict.

(d) Unless otherwise provided in an individual's advance health-care directive appointing an agent, the appointment of a spouse[or domestic partner] of an individual as agent for the individual is revoked by:

(1) a filing for annulment, divorce, dissolution of marriage, legal separation, or termination that has not been dismissed or withdrawn;

(2) a decree of annulment, divorce, dissolution of marriage, legal separation, or

termination;

(3) the individual and the spouse[or domestic partner] have agreed in a record to a legal separation; or

(4) [abandonment] of the individual for more than one year by the individual's spouse[or domestic partner].

Legislative Note: *A state that wishes to include an option for a Ulysses type clause in an advance mental health care directive by including Section 9(d) and (e) should also include subsection (a)(3).*

Section 16. Validity of Advance Health-Care Directive; Conflict with Other Law

(a) An advance health-care directive created outside this state is valid if it complies with:

(1) the law of the state specified in the directive or, if a state is not specified, the state in which the individual created the directive; or

(2) this [act].

(b) A person may assume without inquiry that an advance health-care directive is genuine, valid, and still in effect, and may implement and rely on it, if the person does not have good cause to believe the directive is invalid or has been revoked.

(c) An advance health-care directive or a revocation of a directive may not be denied legal effect or enforceability solely because it is in electronic form.

(d) Evidence relating to an advance health-care directive, revocation of a directive, or a signature on a directive or revocation may not be excluded in a proceeding solely because the evidence is in electronic form.

(e) This [act] does not affect the validity of an electronic record or signature that is valid under [cite to state's Uniform Electronic Transactions Act].

(f) If this [act] conflicts with other law of this state relating to the creation, execution,

implementation, or revocation of an advance health-care directive, this [act] prevails.

Section 17. Duties of Agent and Default Surrogate

(a) An agent or default surrogate has a fiduciary duty to the individual for whom the agent or default surrogate is acting when exercising or purporting to exercise a power under Section 18.

(b) An agent or default surrogate shall make a health-care decision in accordance with the direction of the individual in an advance health-care directive and other goals, preferences and wishes of the individual to the extent known to or reasonably ascertainable by the agent or default surrogate.

(c) If there is not a direction in an advance health-care directive and the goals, preferences and wishes of the individual regarding a health-care decision are not known or reasonably ascertainable by the agent or default surrogate, the agent or default surrogate shall make the decision in accordance with the agent's or default surrogate's determination of the individual's best interest.

(d) In determining the individual's best interest under subsection (c), the agent or default surrogate shall:

(1) give primary consideration to the individual's contemporaneous communications, including verbal and nonverbal expressions;

(2) consider the individual's values to the extent known or reasonably ascertainable by the agent or default surrogate; and

(3) consider the risks and benefits of a potential health-care decision.

(e) An agent or default surrogate who is informed of a revocation of an advance health-care directive or disqualification of the agent or default surrogate, as soon as reasonably feasible,

shall communicate the revocation or disqualification to a responsible health-care professional.
or disqualification to promptly communicate it to a responsible health-care professional.

Section 18. Powers of Agent and Default Surrogate

(a) Except as provided in subsection (c), the power of an agent or default surrogate commences when the individual is found under Section 4(b) or by a court to lack capacity to make a health-care decision. The power ceases if the individual later is found to have capacity to make a health-care decision, or the individual objects under Section 5(c) to the finding of lack of capacity under Section 4(b). If the power ceases because the individual objects under Section 5(c), the power resumes if the finding of lack of capacity is confirmed under Section 5(d)(4) or a court later finds that the individual lacks capacity to make a health-care decision.

(b) An agent or default surrogate may request, receive, examine, copy, and consent to the disclosure of, medical and other health-care information about the individual if the individual would have the right to request, receive, examine, copy, or disclose the information.

(c) A power of attorney for health care may provide that the power of an agent under subsection (b) commences on appointment.

(d) If no other person is authorized to do so, an agent or default surrogate may apply for public or private health insurance and benefits on behalf of the individual. An agent or default surrogate who may apply for insurance and benefits does not, solely by reason of the power, have a duty to apply for the insurance or benefits.

(e) An agent or default surrogate has the following powers only if specifically authorized by the individual in an advance health-care directive in a record:

(1) consent to voluntary admission of the individual to a facility for mental health treatment for a maximum of the number of days specified in the directive or [insert the number

of days a guardian may commit an adult subject to guardianship without using the state's involuntary commitment procedure], whichever is less; and

(2) consent to placement of the individual in a nursing home if the placement is intended to be for more than [100] days, even if:

(A) an alternative living arrangement is reasonably feasible;

(B) the individual objects to the placement; and

(C) the individual is not terminally ill.

Section 19. Limitation on Powers

(a) If an individual has a long-term disability requiring routine treatment by artificial nutrition, hydration, or mechanical ventilation and a history of using the treatment without objection, an agent or default surrogate may not consent to withdrawal of the treatment unless:

(1) the treatment is not necessary to sustain the individual's life or maintain the individual's well-being;

(2) the individual has expressly authorized the withdrawal in a health-care instruction that has not been revoked; or

(3) the individual has experienced a major reduction in health or functional ability from which the individual is not expected to recover, even with other appropriate treatment, and the individual has not:

(A) given a direction inconsistent with withdrawal; or

(B) communicated, by verbal or nonverbal expression, a desire for artificial nutrition, hydration, or mechanical ventilation.

(b) A default surrogate may not make a health-care decision if, under other law of this state, the decision:

(1) may not be made by a guardian; or

(2) may be made by a guardian only if the court appointing the guardian

specifically authorizes the guardian to make the decision.

Section 20. Co-Agents and Alternate Agent

(a) An individual in a power of attorney for health care may appoint multiple individuals to act as co-agents. Unless the power of attorney provides otherwise, each co-agent may exercise independent authority.

(b) An individual in a power of attorney for health care may appoint multiple individuals to act as alternate agents if an agent resigns, dies, becomes disqualified, is not reasonably available, or otherwise is unwilling or unable to act as agent.

(c) Unless the power of attorney provides otherwise, an alternate agent has the same authority as the original agent:

(1) at any time the original agent is not reasonably available or is otherwise unwilling or unable to act, for the duration of the unavailability or inability to act; or

(2) if the original agent and all other predecessor agents have resigned, died, or are disqualified from acting as agent.

Section 21. Duties of Health-Care Professional, Responsible Health-Care Professional, and Health-Care Institution

(a) A responsible health-care professional who is aware that an individual has been found to lack capacity to make a decision shall make a reasonable effort to determine if the individual has a surrogate.

(b) If possible before implementing a health-care decision made by a surrogate, a responsible health-care professional as soon as reasonably feasible shall communicate to the

individual the decision made and the identity of the person making the decision.

(c) A responsible health-care professional who makes or is informed of a finding that an individual lacks capacity to make a health-care decision or no longer lacks capacity, or that other circumstances exist that affect a health-care instruction or the authority of a surrogate, as soon as reasonably feasible shall:

(1) document the finding or circumstance in the individual's medical record; and

(2) if possible, communicate to the individual and the individual's surrogate the finding or circumstance and that the individual may object under Section 5(c) to a finding under Section 4(b).

(d) A responsible health-care professional who is informed that an individual has created or revoked an advance health-care directive, or that a surrogate for an individual has been appointed, designated, or disqualified, shall:

(1) document the information as soon as reasonably feasible in the individual's medical record; and

(2) if evidence of the directive, revocation, appointment, designation, or disqualification is in a record, request a copy and, on receipt, cause the copy to be included in the individual's medical record.

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

(1) a health-care instruction given by the individual regarding the individual's health care;

(2) a reasonable interpretation by the individual's surrogate of an instruction given by the individual; and

(3) a health-care decision for the individual made by the individual's surrogate in accordance with Sections 17 and 18 to the same extent as if the decision had been made by the individual at a time when the individual had capacity.

(f) A health-care professional or a health-care institution may refuse to provide health care consistent with a health-care instruction or health-care decision if:

(1) the instruction or decision is contrary to a policy of the health-care institution providing care to the individual that is based expressly on reasons of conscience and the policy was timely communicated to the individual or to the individual's surrogate;

(2) the care would require care or treatment that is not available to the professional or institution; or

(3) compliance would:

(A) require the professional to provide care that is contrary to the professional's religious beliefs or moral convictions if other law permits the professional to refuse to provide care for that reason;

(B) require the professional or institution to provide care that is contrary to generally accepted health-care standards applicable to the professional or institution; or

(C) violate a court order or other law.

(g) A health-care professional or health-care institution that refuses care under subsection (f) shall:

(1) as soon as reasonably feasible, inform the individual, if possible, and the individual's surrogate of the refusal;

(2) immediately make a reasonable effort to transfer the individual to another health-care professional or health-care institution that is willing to comply with the instruction or

decision; and:

(A) if care is refused under subsection (f)(1) or (2), provide life-sustaining care and care needed to keep or make the individual comfortable, consistent with accepted medical standards to the extent feasible, until a transfer is made; or

(B) if care is refused under subsection (f)(3), provide life-sustaining care and care needed to keep or make the individual comfortable, consistent with accepted medical standards, until a transfer is made or, if the professional or institution reasonably believes that a transfer cannot be made, for at least [10] days after the refusal.

Section 22. Decision by Guardian

(a) A guardian may refuse to comply with or revoke the individual's advance health-care directive only if the court appointing the guardian expressly orders the noncompliance or revocation.

(b) Unless a court orders otherwise, a health-care decision made by an agent appointed by an individual subject to guardianship prevails over a decision of the guardian appointed for the individual.

Legislative Note: *If necessary to avoid a conflict with this act, a state should amend its guardianship laws.*

Section 23. Immunity

(a) A health-care professional or health-care institution acting in good faith is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(1) complying with a health-care decision made for an individual by another person if compliance is based on a reasonable belief that the person has authority to make the decision, including a decision to withhold or withdraw health care;

(2) refusing to comply with a health-care decision made for an individual by

another person if the refusal is based on a reasonable belief that the person lacked authority or capacity to make the decision;

(3) complying with an advance health-care directive based on a reasonable belief that the directive is valid;

(4) refusing to comply with an advance health-care directive based on a reasonable belief that the directive is not valid, including a reasonable belief that the advance directive was not made by the individual or after its creation was substantively altered by a person other than the individual who created it; [or]

(5) determining that an individual who otherwise might be authorized to act as an agent or default surrogate is not reasonably available[; or]

(6) complying with an individual's direction under Section 9(d)].

(b) An agent, default surrogate, or individual with a reasonable belief that the individual is an agent or a default surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for a health-care decision made in a good faith effort to comply with Section 17.

Legislative Note: A state that includes Section 9(d) and (e) to permit a Ulysses clause in an advance mental health-care directive should also include subsection (a)(6).

Section 24. Prohibited Conduct; Damages

(a) A person may not:

(1) intentionally falsify, in whole or in part, an advance health-care directive;

(2) for the purpose of frustrating the intent of the individual who made an advance health-care directive, or with knowledge that doing so is likely to frustrate the intent:

(A) intentionally conceal, deface, obliterate, or delete the directive or a revocation of the directive without consent of the individual who created or revoked the

directive; or

(B) intentionally withhold knowledge of the existence or revocation of the directive from a responsible health-care professional or health-care institution providing health care to the individual who created or revoked the directive; or

(3) coerce or fraudulently induce an individual to create, revoke, or refrain from creating or revoking an advance health-care directive or a part of a directive;

(4) require or prohibit the creation or revocation of an advance health-care directive as a condition for providing health care.

(b) An individual who is the subject of conduct prohibited under subsection (a), or the individual's estate, has a cause of action against a person that violates subsection (a) for statutory damages of \$[25,000] or actual damages resulting from the violation, whichever is greater.

(c) Subject to subsection (d), an individual who makes a health-care instruction, or the individual's estate, has a cause of action against a health-care professional or health-care care institution that intentionally violates Section 21 for statutory damages of \$[50,000] or actual damages resulting from the violation, whichever is greater.

(d) A health-care professional who is an [emergency medical responder] is not liable under subsection (c) for a violation of Section 21(e) that:

(1) occurs in the course of providing care to an individual experiencing a health condition for which the professional reasonably believes the care was appropriate to avoid imminent loss of life or serious harm to the individual;

(2) the failure to comply is consistent with accepted standards of the profession of the professional; and

(3) the provision of care does not begin in a health-care institution in which the

individual resides or was receiving care.

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

(f) A cause of action or remedy under this section is in addition to any cause of action or remedy under other law.

Legislative Note: In subsection (d), a state should insert in the brackets the term used in the state to describe first responders.

Section 25. Effect of Copy; Certification of Physical Copy

(a) A physical or electronic copy of an advance health-care directive, revocation of an advance health-care directive, or appointment, designation, or disqualification of a surrogate has the same effect as the original.

(b) An individual may create a certified physical copy of an advance health-care directive or revocation of an advance health-care directive that is in electronic form by affirming under penalty of perjury that the physical copy is a complete and accurate copy of the directive or revocation.

Section 26. Judicial Relief

(a) On petition of an individual, the individual's surrogate, a health-care professional or health-care institution providing health care to the individual, or a person interested in the welfare of the individual, the court may:

(1) enjoin implementation of a health-care decision made by an agent or default surrogate on behalf of the individual, on a finding that the decision is inconsistent with Section 17 or 18;

(2) enjoin an agent from making a health-care decision for the individual, on a finding that the individual's appointment of the agent has been revoked or the agent:

(A) is disqualified under Section 8(b);

(B) is unable or unwilling to comply with Section 17; or

(C) poses a danger to the individual's well being;

(3) enjoin another individual from acting as a default surrogate, on a finding that the other individual acting as a default surrogate did not comply with Section 12 or the other individual:

(A) is disqualified under Section 14;

(B) is unable or unwilling to comply with Section 17; or

(C) poses a danger to the first individual's well being;

(4) order implementation of a health-care decision made:

(A) by and for the individual; or

(B) by an agent or default surrogate who is acting in compliance with the powers and duties of the agent or default surrogate.

(b) In this [act], advocacy for the withholding or withdrawal of health care or mental health care from an individual is not itself an indication that an agent or default surrogate, or a potential agent or default surrogate, poses a danger to the individual's well being.

(c) A proceeding under this section is governed by [cite to the state's rules of procedure or statutory provisions governing expedited proceedings and proceedings affecting persons found or alleged to lack capacity].

Section 27. Construction

(a) This [act] does not authorize mercy killing, assisted suicide, or euthanasia.

(b) This [act] does not affect other law of this state governing treatment for mental illness of an individual involuntarily committed to a [mental health-care institution] under [cite to state

law governing involuntary commitments].

(c) Death of an individual caused by withholding or withdrawing health care in accordance with this [act] does not constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity.

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

Legislative Note: In subsection (b), include in the brackets the name for a mental health facility used in the state's law governing involuntary commitments and cite to the law.

Section 28. Transitional and Saving Provisions; Interpretation

(a) This [act] applies to an advance health-care directive created before, on, or after [the effective date of this [act]].

(b) An advance health-care directive created before [the effective date of this [act]] is valid if it complies with this [act] or complied at the time of creation with the law of the state in which it was created.

(c) This [act] does not affect the validity or effect of an act done before [the effective date of this [act]].

(d) An individual who assumed authority to act as default surrogate before [the effective date of this [act]] may continue to act as default surrogate until the individual for whom the default surrogate is acting has capacity or the default surrogate is disqualified, whichever occurs first.

(e) An advance health-care directive created before, on, or after [the effective date of this [act]] must be interpreted in accordance with other law of this state, excluding the state's choice-of-law rules, at the time the directive is implemented.

Section 29. Uniformity of Application and Construction

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

[Section 30. Severability]

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

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

Section 31. Repeals; Conforming Amendments

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

(b) . . .

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

A state should examine its statutes to determine whether repeals or conforming revisions are required by Section 8 {Power of Attorney for Health Care} and other provisions of this act relating to health-care powers of attorney, Section 22 {Decision by Guardian} and other provisions of this act relating to guardians.

Section 32. Effective Date

This [act] takes effect . . .