



UNIFORM HEALTH-CARE DECISIONS ACT (2023)

The Uniform Health-Care Decisions Act (“UHCDCA”) was promulgated by the Uniform Law Commission (“ULC”) in 2023, reflecting a multiyear collaborative and non-partisan process to modernize and expand on the Uniform Health-Care Decisions Act approved by the ULC in 1993 (“1993 Act”). This Act enables individuals to appoint agents to make health-care decisions for them if they cannot make those decisions for themselves, provide their health-care professionals and surrogates with instructions about their values and priorities regarding health care, and indicate particular medical treatment they do or do not wish to receive. It also authorizes certain people to make health-care decisions for those incapable of making their own decisions who have not appointed an agent, 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 surrogates and health-care professionals, and provides protection in the form of immunity to both under specified circumstances. The Act seeks to improve upon the 1993 Act by drawing on decades of experience and knowledge about how people make health-care decisions and about the challenges associated with creating and using advance directives.

This Act shares the key goals of the 1993 Act, including: (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 the appointment of a health-care agent and the recording of an individual’s wishes regarding the individual’s own 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.

The new Act reflects substantial changes in how health care is delivered, increases in non-traditional familial relationships and living arrangements, the proliferation of the use of electronic documents, the growing use of separate advance directives exclusively for mental health care, and other recent developments.

A state enacting it would repeal any statute governing the issues addressed in this Act, including the 1993 Act. Below are several key improvements of the Uniform Health-Care Decisions Act:

- This Act incorporates approaches designed to facilitate the use of advance directives. This is important because, although all states have enacted statutes enabling the use of advance directives, many adult Americans have never made one. Without an advance directive, individuals’ wishes are less likely to be honored. In addition, their health-care professionals, family, and friends may struggle to determine how to make health-care decisions for them and to identify what decisions to make. The Act therefore seeks to reduce the number of Americans who lack an advance directive by reducing unnecessary barriers to execution of these documents.
- This Act adds clarity around when a surrogate may act by specifying when the surrogate’s power commences. Patients, surrogates, and health-care professionals are all disadvantaged when it is unclear

whether a surrogate has authority to make decisions. In addition, it addresses an issue on which state statutes are typically silent: what happens if patients object to a surrogate making a decision for them.

- This Act adds provisions to guide determinations of incapacity, which is important because a surrogate's authority to make health-care decisions for a patient typically commences when the patient lacks capacity to make decisions. The Act modernizes the definition of capacity so that it accounts for the functional abilities of an individual and clarifies that the individual may lack capacity to make one decision but retain capacity to make other decisions. In addition, recognizing the growth of allied health professions, and that a variety of health-care professionals may have training and expertise in assessing capacity, the Act expands the list of health-care professionals who are recognized as being able to determine that an individual lacks capacity.
- This Act authorizes the use of advance directives exclusively for mental health care. Since the 1993 Act, many states have authorized such advance directives, sometimes called "psychiatric advance directives." Among other things, these allow individuals with chronic mental health challenges to provide specific instructions as to their preferences for mental health care and to choose to allow those instructions to be binding in the event of an acute mental health crisis.
- This Act modernizes default surrogate provisions that allow family members and certain other people close to a patient to make decisions in the event the patient lacks capacity and has not appointed a health-care agent. The new default surrogate provisions update the priority list in the 1993 Act to reflect a broader array of relationships and family structures. They also provide additional options to address disagreements among default surrogates who have equal priority.
- This Act clarifies the duties and powers of surrogates. 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 only possesses those powers expressly authorized in the power of attorney that appointed the agent.
- This Act includes an optional model form that is designed to be readily understandable and accessible to diverse populations. The form gives individuals the opportunity to readily share information about their values and goals for medical care. Thus, it addresses a common concern raised by health-care professionals in the context of advance planning: that instructions included in advance directives often focus exclusively on preferences for particular treatments, and do not provide health-care professionals or surrogates with the type of information about patients' goals and values that could be used to make value-congruent decisions when novel or unexpected situations arise. The form addresses these concerns by providing options for individuals to indicate goals and values, in addition to specific treatment preferences.

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