

# **UNIFORM RECOGNITION OF SUBSTITUTE DECISION- MAKING DOCUMENTS ACT**

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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# **UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS ACT**

**SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Recognition of Substitute Decision-Making Documents Act.

**SECTION 2. DEFINITIONS.** In this [act]:

(1) “Decision maker” means a person authorized to act for an individual under a substitute decision-making document, whether denominated a decision maker, agent, attorney-in-fact, proxy, or representative or by another title. The term includes an original decision maker, a co-decision maker, a successor decision maker, and a person to which a decision maker’s authority is delegated.

(2) “Good faith” means honesty in fact.

(3) “Health care” means a service or procedure to maintain, diagnose, treat, or otherwise affect an individual’s physical or mental condition.

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

(5) “Personal care” means an arrangement or a service to provide an individual with shelter, food, clothing, transportation, education, recreation, social contact, or assistance with the activities of daily living.

(6) “Property” means anything that may be subject to ownership, whether real or personal or legal or equitable, or any interest or right therein.

(7) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(8) “Substitute decision-making document” means a record created by an individual to authorize a decision maker to act for the individual with respect to property, health care, or



personal care.

### **SECTION 3. VALIDITY OF SUBSTITUTE DECISION-MAKING DOCUMENT.**

(a) A substitute decision-making document for property executed outside this state is valid in this state if, when the document was executed, the execution complied with the law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed.

(b) A substitute decision-making document for health care or personal care executed outside this state is valid in this state if, when the document was executed, the execution complied with:

(1) the law of the jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the jurisdiction in which the document was executed; or

(2) law of this state other than this [act].

(c) Except as otherwise provided by law of this state other than this [act], a photocopy or electronically transmitted copy of an original substitute decision-making document has the same effect as the original.

***Legislative Note:*** *The enacting jurisdiction should examine its statutes that authorize delegation of substitute decision-making authority for property, health care, and personal care and amend, if necessary for consistency, the terminology and substance of Section 3.*

**SECTION 4. MEANING AND EFFECT OF SUBSTITUTE DECISION-MAKING DOCUMENT.** The meaning and effect of a substitute decision-making document and the authority of the decision maker are determined by the law of the jurisdiction indicated in the substitute decision-making document or, if no jurisdiction is indicated, the law of the jurisdiction in which the substitute decision-making document was executed.



## SECTION 5. RELIANCE ON SUBSTITUTE DECISION-MAKING DOCUMENT.

(a) [Except as otherwise provided by [insert a cross-reference to statutes in the enacting jurisdiction, if any, that have different requirements for protected acceptance of a substitute decision-making document], a] [A] person that in good faith accepts a substitute decision-making document without actual knowledge that the document is void, invalid, or terminated, or that the purported decision maker's authority is void, invalid, or terminated, may assume without inquiry that the document is genuine, valid, and still in effect and that the decision maker's authority is genuine, valid, and still in effect.

(b) A person that is asked to accept a substitute decision-making document may request and, without further investigation, may rely on:

(1) the decision maker's assertion of a fact concerning the individual for whom a decision will be made, the decision maker, or the document;

(2) a translation of the document if the document contains, in whole or in part, language other than English; and

(3) an opinion of counsel regarding any matter of law concerning the document if the person requesting the opinion provides in a record the reason for the request.

**Legislative Note:** *The enacting jurisdiction should examine its statutes that authorize delegation of substitute decision-making authority for property, health care, and personal care to determine whether those statutes have different requirements for the protections afforded by Section 5 to persons that accept a substituted decision-making document. A specific cross-reference in Section 5 to such statutes is advisable. For example, if the enacting jurisdiction has adopted the Uniform Power of Attorney Act, Section 5(a) may be revised to read: "Except as otherwise provided by Section 119 of the Uniform Power of Attorney Act,[citation], a person that in good faith accepts . . . ." An enacting jurisdiction should examine these statutes to determine whether the use and definition of terms such as "good faith" is consistent with this act. Appropriate amendments should be made where necessary for consistency.*



**SECTION 6. OBLIGATION TO ACCEPT SUBSTITUTE DECISION-MAKING DOCUMENT.**

(a) Except as otherwise provided in subsection (b) or by law of this state other than this [act], a person shall accept within a reasonable time a substitute decision-making document that purportedly meets the validity requirements of Section 3 and may not require an additional or different form of document for authority granted in the document presented.

(b) A person is not required to accept a substitute decision-making document if:

(1) the person otherwise would not be required in the same circumstances to act if requested by the individual who executed the document;

(2) the person has actual knowledge of the termination of the decision maker's authority or the document;

(3) the person's request under Section 5(b) for the decision maker's assertion of fact, a translation, or an opinion of counsel is refused;

(4) the person in good faith believes that the document is not valid or that the decision maker does not have the authority to request a particular transaction or action; or

(5) the person makes, or has actual knowledge that another person has made, a report to the [local office of adult protective services] stating a belief that the individual for whom a decision will be made may be subject to abuse, neglect, exploitation, or abandonment by the decision maker or a person acting for or with the decision maker.

(c) A person that in violation of this section refuses to accept a substitute decision-making document is subject to:

(1) a court order mandating acceptance of the document; and

(2) liability for reasonable attorney's fees and costs incurred in an action or



proceeding that mandates acceptance of the document.

**Legislative Note:** *The enacting jurisdiction should examine its laws that authorize delegation of substitute decision-making authority for property, health care, and personal care to determine whether those laws have different requirements for acceptance of a substitute decision-making document than those provided in Section 6. When differences exist, a specific cross-reference in Section 6 is advisable. For example, if the enacting jurisdiction has adopted the Uniform Power of Attorney Act, Section 6(a) may be revised to read: “Except as otherwise provided in Section 120(b) of the Uniform Power of Attorney Act, [citation], a person shall accept . . .”. An enacting jurisdiction should also examine its laws to determine whether the use and definition of terms such as “good faith” is consistent with this act. Appropriate amendments should be made where necessary for consistency.*

*The phrase “local adult protective services office” is bracketed to indicate where an enacting jurisdiction should insert the appropriate designation for the governmental agency with regulatory authority to protect the welfare of the individual who executed the substitute decision-making document. The designation may include, for example, an office of local law enforcement.*

**SECTION 7. REMEDIES UNDER OTHER LAW.** The remedies under this [act] are not exclusive and do not abrogate any right or remedy under law of this state other than this [act].

**SECTION 8. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the [states] that enact it.

**SECTION 9. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

**SECTION 10. APPLICABILITY.** This [act] applies to a substitute decision-making document created before, on, or after [the effective date of this [act]].



**SECTION 11. REPEALS; CONFORMING AMENDMENTS.**

(a) . . . .

(b) . . . .

(c) . . . .

***Legislative Note:** The enacting jurisdiction should examine its statutes that authorize delegation of substitute decision-making authority for property, health care, and personal care and set forth in this section necessary conforming amendments.*

**SECTION 12. EFFECTIVE DATE.** This [act] takes effect....