

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

# A Bill

SENATE BILL 1013

5 By: Senator Irvin  
6

## For An Act To Be Entitled

8 AN ACT TO CREATE THE ARKANSAS HEALTH CARE DECISIONS  
9 ACT; TO PROTECT PATIENTS' RIGHTS TO MAKE THEIR OWN  
10 HEALTH CARE DECISIONS; TO PROMOTE ADVANCE DIRECTIVES;  
11 TO PROVIDE LEGAL PROTECTION FOR PATIENTS' RIGHTS; AND  
12 FOR OTHER PURPOSES.  
13  
14

## Subtitle

15  
16 TO CREATE THE ARKANSAS HEALTH CARE  
17 DECISIONS ACT.  
18  
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 SECTION 1. Arkansas Code Title 20, Chapter 6, is amended to add an  
23 additional subchapter to read as follows:

### Subchapter 1 – Arkansas Healthcare Decisions Act

#### 20-6-101. Title.

27 This subchapter shall be known and may be cited as the "Arkansas  
28 Healthcare Decisions Act."  
29

#### 20-6-102. Definitions.

#### As used in this subchapter:

32 (1) "Advance directive" means an individual instruction or a  
33 written statement that anticipates and directs the provision of health care  
34 for an individual, including without limitation a living will or a durable  
35 power of attorney for health care;

36 (2) "Agent" means an individual designated in an advance



1 directive for health care to make a healthcare decision for the individual  
2 granting the power;

3 (3) "Capacity" means an individual's ability to understand the  
4 significant benefits, risks, and alternatives to proposed health care and to  
5 make and communicate a healthcare decision;

6 (4) "Designated physician" means a physician designated by an  
7 individual or the individual's agent, guardian, or surrogate, to have primary  
8 responsibility for the individual's health care or, in the absence of a  
9 designation or if the designated physician is not reasonably available, a  
10 physician who undertakes responsibility for the individual's health care;

11 (5) "Emergency responder" means a paid or volunteer firefighter,  
12 law enforcement officer, or other public safety official or volunteer acting  
13 within the scope of his or her proper function or rendering emergency care at  
14 the scene of an emergency;

15 (6) "Guardian" means a judicially appointed guardian or  
16 conservator having authority to make a healthcare decision for an individual;

17 (7) "Health care" means any care, treatment, service, or  
18 procedure to maintain, diagnose, treat, or otherwise affect an individual's  
19 physical or mental condition, including medical care;

20 (8) "Healthcare decision" means consent, refusal of consent, or  
21 withdrawal of consent to health care;

22 (9) "Healthcare institution" means an agency, institution,  
23 facility, or place, whether publicly or privately owned or operated, that  
24 provides health services and that is one (1) of the following:

25 (A) An ambulatory surgical treatment center;

26 (B) A birthing center;

27 (C) A home care organization;

28 (D) A hospital;

29 (E) An intellectual disability institutional habilitation  
30 facility;

31 (F) A mental health hospital;

32 (G) A nonresidential substitution-based treatment center  
33 for opiate addiction;

34 (H) A nursing home;

35 (I) An outpatient diagnostic center;

36 (J) A recuperation center;

1                   (K) A rehabilitation facility; or

2                   (L) A residential hospice;

3                   (10) "Healthcare provider" means a person who is licensed,  
4 certified, or otherwise authorized by the laws of this state to administer  
5 health care in the ordinary course of the practice of his or her profession;

6                   (11) "Individual instruction" means an individual's direction  
7 concerning a healthcare decision for the individual;

8                   (12) "Medical care" means the diagnosis, cure, mitigation,  
9 treatment, or prevention of disease for the purpose of affecting any  
10 structure or function of the body;

11                   (13) "Person" means an individual, corporation, estate, trust,  
12 partnership, association, joint venture, government, governmental  
13 subdivision, agency, instrumentality, or any other legal or commercial  
14 entity;

15                   (14) "Person authorized to consent on the principal's behalf"  
16 means:

17                   (A) A person authorized by law to consent on behalf of the  
18 principal when the principal is incapable of making an informed decision; or

19                   (B) In the case of a minor child, the parent or parents  
20 having custody of the child, the child's legal guardian, or another person as  
21 otherwise provided by law;

22                   (15) "Personally inform" means to communicate by any effective  
23 means from the principal directly to a healthcare provider;

24                   (16) "Physician" means an individual authorized to practice  
25 medicine or osteopathy in this state;

26                   (17) "Power of attorney for health care" means the authority of  
27 an agent to make healthcare decisions for the individual granting the power;

28                   (18) "Principal" means an individual who grants authority to an  
29 individual under this subchapter;

30                   (19) "Qualified emergency medical service personnel" includes  
31 without limitation, emergency medical technicians, paramedics, or other  
32 emergency services personnel, providers, or entities acting within the usual  
33 course of their professions, and other emergency responders;

34                   (20) "Reasonably available" means readily able to be contacted  
35 without undue effort and willing and able to act in a timely manner  
36 considering the urgency of the principal's healthcare needs, including

1 without limitation availability by telephone;

2 (21) "State" means a state of the United States, the District of  
3 Columbia, the Commonwealth of Puerto Rico, or a territory or insular  
4 possession subject to the jurisdiction of the United States;

5 (22) "Supervising healthcare provider" means the designated  
6 physician or, if there is no designated physician or the designated physician  
7 is not reasonably available, the healthcare provider who has undertaken  
8 primary responsibility for an individual's health care;

9 (23) "Surrogate" means an individual, other than a principal's  
10 agent or guardian, authorized under this subchapter to make a healthcare  
11 decision for the principal;

12 (24) "Treating healthcare provider" means a healthcare provider  
13 who is directly or indirectly involved in providing health care to the  
14 principal; and

15 (25) "Universal Do Not Resuscitate Order" means a written order  
16 that applies regardless of the treatment setting and that is signed by the  
17 principal's physician that states that in the event the principal suffers  
18 cardiac or respiratory arrest, cardiopulmonary resuscitation should not be  
19 attempted.

20  
21 20-6-103. Oral or written individual instructions -- Advance directive  
22 for health care -- When effective -- Decisions based on best interest  
23 assessment -- Out-of-state directives -- Construction.

24 (a)(1) An adult or emancipated minor may give an individual  
25 instruction.

26 (2) The instruction may be oral or written.

27 (3) The instruction may be limited to take effect only if a  
28 specified condition arises.

29 (b)(1) An adult or emancipated minor may execute an advance directive  
30 for health care that authorizes the agent to make a healthcare decision that  
31 the principal could make if he or she had capacity.

32 (2) An advance directive shall be in writing and  
33 signed by the principal.

34 (3) An advance directive shall be either notarized or witnessed  
35 by two (2) witnesses.

36 (4) For the purposes of this subsection (b) a witness shall be

1 a competent adult who is not the agent and at least one (1) of whom is not  
2 related to the principal by blood, marriage, or adoption and who would not be  
3 entitled to any portion of the estate of the principal upon the death of the  
4 principal under any will or codicil made by the principal existing at the  
5 time of execution of the advance directive or by operation of law.

6 (5) A written advance directive that is witnessed shall contain  
7 an attestation clause that attests that the witnesses comply with this  
8 subsection (b).

9 (6) An advance directive remains in effect notwithstanding the  
10 principal's last incapacity and may include individual instructions.

11 (7) An advance directive may include the principal's nomination  
12 of a guardian of the principal.

13 (c) Unless otherwise specified in an advance directive, the authority  
14 of an agent becomes effective only upon a determination that the principal  
15 lacks capacity, and ceases to be effective upon a determination that the  
16 principal has recovered capacity.

17 (d)(1) If necessary, the designated physician shall determine whether  
18 a principal lacks or has recovered capacity, or that another condition exists  
19 that affects an individual instruction or the authority of an agent.

20 (2) In making a determination under subdivision (d)(1) of this  
21 section, the designated physician may consult with other persons as he or she  
22 deems appropriate.

23 (e)(1) An agent shall make a healthcare decision in accordance with  
24 the principal's individual instructions and other wishes to the extent known  
25 to the agent.

26 (2)(A) In the absence of individual instructions or other  
27 information, the agent shall make the decision in accordance with the agent's  
28 determination of the principal's best interest.

29 (B) In determining the principal's best interest, the  
30 agent shall consider the principal's personal values to the extent known to  
31 the agent.

32 (f) A healthcare decision made by an agent for a principal is  
33 effective without judicial approval.

34 (g) An advance directive that is executed outside of this state by a  
35 nonresident of this state shall be given effect in this state at the time of  
36 execution if the advance directive complies with either this subchapter or

1 the laws of the state of the principal's residence.

2 (h) A healthcare provider, healthcare institution, healthcare service  
3 plan, insurer issuing disability insurance, self-insured employee welfare  
4 benefit plan, or nonprofit hospital plan shall not require the execution or  
5 revocation of an advance directive as a condition of the principal's being  
6 insured for or receiving health care.

7  
8 20-6-104. Revocation of the designation of agent -- Revocation of  
9 advance directive -- Spouse as agent -- Conflicts.

10 (a) A principal having capacity may revoke all or part of an advance  
11 directive, other than the designation of an agent, at any time and in any  
12 manner that communicates an intent to revoke.

13 (b) A principal having capacity may revoke the designation of an agent  
14 only by a signed written statement or by personally informing the supervising  
15 healthcare provider.

16 (c) A decree of annulment, divorce, dissolution of marriage, or legal  
17 separation revokes a previous designation of a spouse as agent unless  
18 otherwise specified in the decree or in an advance directive.

19 (d) An advance directive that conflicts with an earlier advance  
20 directive revokes the earlier directive to the extent of the conflict.

20-6-105. Advance directive form – Rules.

The State Board of Health shall adopt the following Advance Care Plan Form:

**ADVANCE CARE PLAN**

*Instructions: Competent adults and emancipated minors may give advance instructions using this form or any form of their own choosing. To be legally binding, the Advance Care Plan must be signed and either witnessed or notarized.*

I, \_\_\_\_\_, hereby give these advance instructions on how I want to be treated by my doctors and other health care providers when I can no longer make those treatment decisions myself.

**Agent:** I want the following person to make health care decisions for me:

Name: \_\_\_\_\_ Phone #: \_\_\_\_\_ Relation: \_\_\_\_\_  
Address: \_\_\_\_\_

**Alternate Agent:** If the person named above is unable or unwilling to make health care decisions for me, I appoint as alternate:

Name: \_\_\_\_\_ Phone #: \_\_\_\_\_ Relation: \_\_\_\_\_  
Address: \_\_\_\_\_

**Quality of Life:**

I want my doctors to help me maintain an acceptable quality of life including adequate pain management. A quality of life that is unacceptable to me means when I have any of the following conditions (**you can check as many of these items as you want**):

- ☐ **Permanent Unconscious Condition:** I become totally unaware of people or surroundings with little chance of ever waking up from the coma.
- ☐ **Permanent Confusion:** I become unable to remember, understand or make decisions. I do not recognize loved ones or cannot have a clear conversation with them.
- ☐ **Dependent in all Activities of Daily Living:** I am no longer able to talk clearly or move by myself. I depend on others for feeding, bathing, dressing and walking. Rehabilitation or any other restorative treatment will not help.
- ☐ **End-Stage Illnesses:** I have an illness that has reached its final stages in spite of full treatment. Examples: Widespread cancer that does not respond anymore to treatment; chronic and/or damaged heart and lungs, where oxygen needed most of the time and activities are limited due to the feeling of suffocation.

**Treatment:**

If my quality of life becomes unacceptable to me and my condition is irreversible (that is, it will not improve), I direct that medically appropriate treatment be provided as follows. **Checking "yes" means I WANT the treatment. Checking "no" means I DO NOT want the treatment.**

<input type="checkbox"/>	<input type="checkbox"/>	<b><u>CPR (Cardiopulmonary Resuscitation):</u></b> To make the heart beat again and restore breathing after it has stopped. Usually this involves electric shock, chest compressions, and breathing assistance.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b><u>Life Support / Other Artificial Support:</u></b> Continuous use of breathing machine, IV fluids, medications, and other equipment that helps the lungs, heart, kidneys and other organs to continue to work.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b><u>Treatment of New Conditions:</u></b> Use of surgery, blood transfusions, or antibiotics that will deal with a new condition but will not help the main illness.
Yes	No	
<input type="checkbox"/>	<input type="checkbox"/>	<b><u>Tube feeding/IV fluids:</u></b> Use of tubes to deliver food and water to patient's stomach or use of IV fluids into a vein which would include artificially delivered nutrition and hydration.
Yes	No	

20-6-106. Appointment of agent form – Rules.

The State Board of Health shall adopt the following Appointment of Agent Form:

Other instructions, such as burial arrangements, hospice care, etc.: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 (Attach additional pages if necessary)

Organ donation (optional): Upon my death, I wish to make the following anatomical gift (please mark one):  
☐ Any organ/tissue      ☐ My entire body      ☐ Only the following organs/tissues: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SIGNATURE**

Your signature should either be witnessed by two competent adults or notarized. If witnessed, neither witness should be the person you appointed as your agent, and at least one of the witnesses should be someone who is not related to you or entitled to any part of your estate.

Signature: \_\_\_\_\_ DATE: \_\_\_\_\_  
 (Patient)

Witnesses:

1. I am a competent adult who is not named as the agent. I witnessed the patient's signature on this form. \_\_\_\_\_  
 Signature of witness number 1
2. I am a competent adult who is not named as the agent. I am not related to the patient by blood, marriage, or adoption and I would not be entitled to any portion of the patient's estate upon his or her death under any existing will or codicil or by operation of law. I witnessed the patient's signature on this form. \_\_\_\_\_  
 Signature of witness number 2

This document may be notarized instead of witnessed:

STATE OF ARKANSAS  
 COUNTY OF \_\_\_\_\_

I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who signed as the "patient". The patient personally appeared before me and signed above or acknowledged the signature above as his or her own. I declare under penalty of perjury that the patient appears to be of sound mind and under no duress, fraud, or undue influence.

My commission expires: \_\_\_\_\_ Signature of Notary Public

**WHAT TO DO WITH THIS ADVANCE DIRECTIVE**

- Provide a copy to your physician(s)
- Keep a copy in your personal files where it is accessible to others
- Tell your closest relatives and friends what is in the document
- Provide a copy to the person(s) you named as your health care agent

1       20-6-107. Designation of surrogate.

2       (a)(1) An adult or emancipated minor may designate an individual to  
3 act as surrogate by personally informing the supervising healthcare provider.

4               (2) The designation may be oral or written.

5       (b) A surrogate may make a healthcare decision for a principal who is  
6 an adult or emancipated minor only if:

7               (1) The principal has been determined by the designated  
8 physician to lack capacity; and

9               (2) An agent or guardian has not been appointed or the agent  
10 or guardian is not reasonably available.

11       (c)(1) The supervising healthcare provider shall designate a surrogate  
12 for the principal and document the appointment in the clinical record of the  
13 institution or institutions at which the principal is receiving health care  
14 if the principal:

15                   (A) Lacks capacity;

16                   (B) Has not appointed an agent or the agent is not  
17 reasonably available;

18                   (C) Has not designated a surrogate or the surrogate is not  
19 reasonably available; and

20                   (D) Does not have a guardian or the guardian is not  
21 reasonably available.

22       (2)(A) The principal's surrogate shall be an adult who:

23                   (i) Has exhibited special care and concern for the  
24 principal;

25                   (ii) Is familiar with the principal's personal  
26 values;

27                   (iii) Is reasonably available; and

28                   (iv) Is willing to serve.

29       (B) A person who is the subject of a protective order or  
30 other court order that directs that person to avoid contact with the  
31 principal is not eligible to serve as the principal's surrogate.

32       (3) In designating the person best qualified to serve as the  
33 surrogate for the principal, the supervising healthcare provider shall  
34 consider the proposed surrogate's:

35               (A) Ability to make decisions either in accordance with  
36 the known wishes of the principal or in accordance with the principal's best

1 interests;

2 (B) Frequency of contact with the principal before and  
3 during the incapacitating illness;

4 (C) Demonstrated care and concern;

5 (D) Availability to visit the principal during his or her  
6 illness; and

7 (E) Availability to engage in face-to-face contact with  
8 healthcare providers for the purpose of fully participating in the decision-  
9 making process.

10 (4) Consideration may be given in order of descending preference  
11 for service as a surrogate to:

12 (A) The principal's spouse, unless legally separated;

13 (B) The principal's adult child;

14 (C) The principal's parent;

15 (D) The principal's adult sibling; or

16 (E) Any other adult relative of the principal.

17 (5) If none of the individuals eligible to act as a surrogate  
18 under this subsection (c) is reasonably available, the designated physician  
19 may make healthcare decisions for the principal after the designated  
20 physician:

21 (A) Consults with and obtains the recommendations of an  
22 institution's ethics officers; or

23 (B) Obtains concurrence from a second physician who is:

24 (i) Not directly involved in the principal's health  
25 care;

26 (ii) Does not serve in a capacity of decision-  
27 making, influence, or responsibility over the designated physician; and

28 (iii) Does not serve in a capacity under the  
29 authority of the designated physician's decision-making, influence, or  
30 responsibility.

31 (6)(A) In the event of a challenge to the designation of the  
32 surrogate or the authority of the surrogate to act, it is a rebuttable  
33 presumption that the selection of the surrogate was valid.

34 (B) A person who challenges the selection of the surrogate  
35 has the burden of proving the invalidity of that selection by a preponderance  
36 of the evidence.

1       (d)(1) Except as provided in subdivision (g)(2) of this section:

2               (A) Neither the treating healthcare provider nor an  
3 employee of the treating healthcare provider, nor an operator of a healthcare  
4 institution, nor an employee of an operator of a healthcare institution may  
5 be designated as a surrogate; and

6               (B) A healthcare provider or employee of a healthcare  
7 provider may not act as a surrogate if the healthcare provider becomes the  
8 principal's treating health care provider.

9               (2) An employee of the treating healthcare provider or an  
10 employee of an operator of a healthcare institution may be designated as a  
11 surrogate if:

12               (A) The employee so designated is a relative of the  
13 principal by blood, marriage, or adoption; and

14               (B) The other requirements of this section are satisfied.

15       (e) A health care provider may require an individual claiming the  
16 right to act as surrogate for a principle to provide a written declaration  
17 under penalty of perjury stating facts and circumstances reasonably  
18 sufficient to establish the claimed authority.

19  
20       20-6-108. Authority of surrogate.

21       (a)(1) A surrogate shall make a healthcare decision in accordance with  
22 the principal's individual instructions, if any, and other wishes to the  
23 extent known to the surrogate.

24               (2)(A) Otherwise, the surrogate shall make the decision in  
25 accordance with the surrogate's determination of the principal's best  
26 interest.

27               (B) In determining the principal's best interest, the  
28 surrogate shall consider the principal's personal values to the extent known  
29 to the surrogate.

30       (b) A surrogate who has not been designated by the principal may make  
31 all health care decisions for the principal that the principal could make on  
32 the principal's own behalf, except that artificial nutrition and hydration  
33 may be withheld or withdrawn for a principal upon a decision of the surrogate  
34 only if the designated physician and a second independent physician certify  
35 in the principal's current clinical records that:

36               (1) The provision or continuation of artificial nutrition or

1 hydration is merely prolonging the act of dying; and

2 (2) The principal is highly unlikely to regain capacity to make  
 3 medical decisions.

4 (c) A healthcare decision made by a surrogate for a principal is  
 5 effective without judicial approval.

7 20-6-109. Surrogacy appointment form – Rules.

8 The State Board of Health shall adopt the following Surrogacy  
 9 Appointment Form:

10 **APPOINTMENT OF HEALTH CARE AGENT**  
 11 (ARKANSAS)

12 I, \_\_\_\_\_, give my agent named below permission to make health care  
 13 decisions for me if I cannot make decisions for myself, including any health care decision that I could have made  
 14 for myself if able. If my agent is unavailable or is unable or unwilling to serve, the alternate named below will take  
 15 the agent's place.

16 Agent:

Alternate:

17 Name \_\_\_\_\_

Name \_\_\_\_\_

18 Address \_\_\_\_\_

Address \_\_\_\_\_

19 City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

20 ( ) \_\_\_\_\_  
 Area Code Home Phone Number

( ) \_\_\_\_\_  
 Area Code Home Phone Number

21 ( ) \_\_\_\_\_  
 Area Code Work Phone Number

( ) \_\_\_\_\_  
 Area Code Work Phone Number

22 ( ) \_\_\_\_\_  
 Area Code Mobile Phone Number

( ) \_\_\_\_\_  
 Area Code Mobile Phone Number

23 Patient's name (please print or type) \_\_\_\_\_

Date \_\_\_\_\_

Signature of patient (must be at least 18 or emancipated minor) \_\_\_\_\_

24 To be legally valid, **either block A or block B** must be properly completed and signed.

25 **Block A** Witnesses (2 witnesses required)

26 1. I am a competent adult who is not named above.  
 27 I witnessed the patient's signature on this form.

Signature of witness number 1 \_\_\_\_\_

28 2. I am a competent adult who is not named above. I am not  
 29 related to the patient by blood, marriage, or adoption and I  
 30 would not be entitled to any portion of the patient's estate upon  
 31 his or her death under any existing will or codicil or by operation  
 32 of law. I witnessed the patient's signature on this form.

Signature of witness number 2 \_\_\_\_\_

33 **Block B** Notarization

34 STATE OF ARKANSAS  
 35 COUNTY OF \_\_\_\_\_

36 I am a Notary Public in and for the State and County named above. The person who signed this instrument is personally known to me (or  
 proved to me on the basis of satisfactory evidence) to be the person whose name is shown above as the "patient." The patient personally  
 appeared before me and signed above or acknowledged the signature above as his or her own. I declare under penalty of perjury that the  
 patient appears to be of sound mind and under no duress, fraud, or undue influence.

My commission expires: \_\_\_\_\_

Signature of Notary Public \_\_\_\_\_

1  
2 20-6- 110 Requirement to comply with principal's individual instruction  
3 -- Order of precedence.

4 (a) Absent a court order to the contrary, a guardian shall comply with  
5 the principal's individual instructions and shall not revoke the principal's  
6 advance directive.

7 (b) A healthcare decision made by a guardian for the principal is  
8 effective without judicial approval.

9  
10 20-6-111. Determination of capacity.

11 If a designated physician who makes a determination or is informed of a  
12 determination that a principal lacks or has recovered capacity or that  
13 another condition exists that affects an individual instruction or the  
14 authority of an agent, guardian, or surrogate, the designated physician  
15 shall:

16 (1) Record promptly the determination in the principal's current  
17 clinical record; and

18 (2) Communicate the determination to the principal, if possible,  
19 and to any person authorized to make healthcare decisions for the principal.

20  
21 20-6-112. Compliance by health care provider or institution.

22 (a) Except as provided in subsections (b), (c), and (d) of this  
23 section, a healthcare provider or institution providing care to a principal  
24 shall comply with:

25 (1) An individual instruction of the principal and with a  
26 reasonable interpretation of that instruction by a person authorized to make  
27 health care decisions for the principal; and

28 (2) A healthcare decision for the principal made by a person  
29 authorized to make healthcare decisions for the principal to the same extent  
30 as if the decision had been made by the principal while having capacity.

31 (b) A healthcare provider may decline to comply with an individual  
32 instruction or healthcare decision for reasons of conscience.

33 (c) A healthcare institution may decline to comply with an individual  
34 instruction or healthcare decision if the instruction or decision:

35 (1) Is contrary to a policy of the institution that is based on  
36 reasons of the conscience; and

1           (2) The policy was timely communicated to the principal or to a  
2 person authorized to make healthcare decisions for the principal.

3           (d) A healthcare provider or institution may decline to comply with an  
4 individual instruction or healthcare decision that requires medically  
5 inappropriate health care or healthcare contrary to generally accepted health  
6 care standards applicable to the healthcare provider or institution.

7           (e) A healthcare provider or institution that declines to comply with  
8 an individual instruction or healthcare decision under subsections (b), (c),  
9 or (d) of this section shall:

10           (1) Inform promptly the principal, if possible, or a person  
11 authorized to make healthcare decisions for the principal;

12           (2) Provide continuing care to the principal until a transfer  
13 can be effected or until a determination has been made that a transfer cannot  
14 be effected; and

15           (3)(A) Unless the principal or person authorized to make  
16 healthcare decisions for the principal refuses assistance, immediately make  
17 all reasonable efforts to assist in the transfer of the principal to another  
18 healthcare provider or healthcare institution that is willing to comply with  
19 the instruction or decision.

20           (B) If a transfer cannot be effected, the healthcare  
21 provider or institution shall not be compelled to comply.

22  
23           20-6-113. Disclosure of medical or other healthcare information.

24           Unless otherwise specified in an advance directive, a person authorized  
25 to make healthcare decisions for a principal has the same rights as the  
26 principal to request, receive, examine, copy, and consent to the disclosure  
27 of medical or any other healthcare information.

28  
29           20-6-114. Liability.

30           (a) A healthcare provider or healthcare institution acting in good  
31 faith and in accordance with generally accepted healthcare standards  
32 applicable to the healthcare provider or healthcare institution is not  
33 subject to civil or criminal liability or to discipline for unprofessional  
34 conduct for:

35           (1) Complying with a healthcare decision of a person apparently  
36 having authority to make a healthcare decision for a principal, including a

1 decision to withhold or withdraw health care;

2 (2) Declining to comply with a healthcare decision of a person  
3 based on a reasonable belief that the person then lacked authority; or

4 (3) Complying with an advance directive that, to the knowledge  
5 of the healthcare provider or healthcare institution, was valid when made and  
6 has not been revoked or terminated.

7 (b) An individual acting as agent or surrogate under this subchapter  
8 is not subject to civil or criminal liability or to discipline for  
9 unprofessional conduct for healthcare decisions made in good faith.

10 (c) A person who designates a surrogate under this subchapter is not  
11 subject to civil or criminal liability or to discipline for unprofessional  
12 conduct for a designation made in good faith.

13  
14 20-6-115. Presumption of capacity.

15 (a) This subchapter does not affect the right of an individual to make  
16 health care decisions while having capacity to do so.

17 (b) An individual is presumed to have capacity to make a health care  
18 decision, to give or revoke an advance directive, and to designate or  
19 disqualify a surrogate.

20  
21 20-6-116. Copies have same effect as originals.

22 A copy of a written advance directive, revocation of an advance  
23 directive, or designation or disqualification of a surrogate has the same  
24 effect as the original.

25  
26 20-6-117. Presumptions not created -- Death does not constitute  
27 suicide, euthanasia, homicide, mercy killing, or assisted suicide.

28 (a) This subchapter does not create a presumption concerning the  
29 intention of an individual who has not made or who has revoked an advance  
30 directive.

31 (b) Notwithstanding any term of an insurance policy or annuity to the  
32 contrary, a death resulting from the withholding or withdrawal of health care  
33 in accordance with this subchapter does not constitute a suicide or homicide  
34 or legally impair or invalidate an insurance policy or an annuity providing a  
35 death benefit.

36 (c) The withholding or withdrawal of medical care from a principal in

1 accordance with this subchapter does not constitute a suicide, euthanasia,  
2 homicide, mercy killing, or assisted suicide.

3  
4 20-6-118. Court jurisdiction.

5 (a) A court of competent jurisdiction may enjoin or direct a  
6 healthcare decision or order other equitable relief on a petition of:

7 (1) A principal;

8 (2) a principal's agent, guardian, or surrogate;

9 (3) A healthcare provider or healthcare institution involved  
10 with the principal's care; or

11 (4) An individual described in § 20-6-106(c)(5).

12 (b) A proceeding under this section shall be expedited on the court's  
13 civil dockets.

14  
15 20-6-119. Effect and interpretation of living wills.

16 (a) If a living will entered into before October 1, 2013 was valid at  
17 the time of execution, it remains valid.

18 (b) A living will entered into on or after October 1, 2013 that  
19 evidences an intent that it is entered into under this subchapter is valid.

20 (c) A living will entered into on or after October 1, 2013 that does  
21 not evidence an intent that it is entered into under this chapter may be  
22 given effect as an individual instruction, if it complies with this  
23 subchapter.

24  
25 20-6-120. Effect and interpretation of durable powers of attorney.

26 (a) If a durable power of attorney for health care entered into before  
27 October 1, 2013 was valid at the time of execution, it remains valid.

28 (b) A durable power of attorney for health care entered into on or  
29 after October 1, 2013, that evidences an intent that it is entered into under  
30 this subchapter is valid.

31 (c) A durable power of attorney for health care entered into on or  
32 after October 1, 2013 that does not evidence an intent that it is entered  
33 into under this subchapter may be given effect as an advance directive  
34 under this subchapter, if it complies with this subchapter.

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36 20-6-121. Conflicting laws repealed.

A law or a part of a law in conflict with this subchapter is repealed.

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