

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 247

FINAL READING

Introduced by Bolz, 29; Linehan, 39.

Read first time January 14, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to health care; to amend sections 30-3402,
2 30-3405, 30-3406, 30-3408, and 30-3423, Reissue Revised Statutes of
3 Nebraska; to adopt the Advance Mental Health Care Directives Act; to
4 change and harmonize power of attorney for health care provisions;
5 and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 15 of this act shall be known and may be
2 cited as the Advance Mental Health Care Directives Act.

3 Sec. 2. (1) The Legislature finds that:

4 (a) Issues implicated in advance planning for end-of-life care are
5 distinct from issues implicated in advance planning for mental health
6 care;

7 (b) Mental illness can be episodic and include periods of incapacity
8 which obstruct an individual's ability to give informed consent and
9 impede the individual's access to mental health care;

10 (c) An acute mental health episode can induce an individual to
11 refuse treatment when the individual would otherwise consent to treatment
12 if the individual's judgment were unimpaired;

13 (d) An individual may lose capacity without meeting the criteria for
14 civil commitment in Nebraska; and

15 (e) An individual with mental illness has the same right to plan in
16 advance for treatment as an individual planning for end-of-life care.

17 (2) The purposes of the Advance Mental Health Care Directives Act
18 are to:

19 (a) Facilitate advance planning to help (i) prevent unnecessary
20 involuntary commitment and incarceration, (ii) improve patient safety and
21 health, (iii) improve mental health care, and (iv) enable an individual
22 to exercise control over such individual's mental health treatment; and

23 (b) Protect patient safety, autonomy, and health by allowing an
24 individual to create an advance mental health care directive to instruct
25 and direct the individual's mental health care.

26 Sec. 3. (1) The Legislature hereby declares that an advance mental
27 health care directive can only accomplish the purposes stated in section
28 2 of this act if an individual may use an advance mental health care
29 directive to:

30 (a) Set forth instructions for any foreseeable mental health care
31 when the individual loses capacity to make decisions regarding such

1 mental health care, including, but not limited to, consenting to
2 inpatient mental health treatment, psychotropic medication, or
3 electroconvulsive therapy;

4 (b) Dictate whether the directive is revocable during periods of
5 incapacity and provide consent to treatment despite illness-induced
6 refusals;

7 (c) Choose the standard by which the directive becomes active; and

8 (d) In compliance with the federal Health Insurance Portability and
9 Accountability Act of 1996, include in the directive a release
10 authorization form stating the names of persons to whom information
11 regarding the mental health treatment of the principal may be disclosed
12 during the time the directive is activated, including, but not limited
13 to, health care professionals, mental health care professionals, family,
14 friends, and other interested persons with whom treatment providers are
15 allowed to communicate if the principal loses capacity.

16 (2) An individual with capacity has the right to control decisions
17 relating to the individual's mental health care unless subject to a court
18 order involving mental health care under any other provision of law.

19 Sec. 4. For purposes of the Advance Mental Health Care Directives
20 Act:

21 (1) Activation means the point at which an advance mental health
22 care directive is used as the basis for decisionmaking as provided in
23 section 9 of this act;

24 (2) Attorney in fact means an individual designated under a power of
25 attorney for health care to make mental health care decisions for a
26 principal;

27 (3)(a) Capacity means having both (i) the ability to understand and
28 appreciate the nature and consequences of mental health care decisions,
29 including the benefits and risks of each, and alternatives to any
30 proposed mental health treatment, and to reach an informed decision, and
31 (ii) the ability to communicate in any manner such mental health care

1 decision.

2 (b) An individual's capacity is evaluated in relation to the demands
3 of a particular mental health care decision;

4 (4) Principal means an individual who is nineteen years of age or
5 older with capacity who provides instructions, preferences, or both
6 instructions and preferences for any foreseeable mental health care in an
7 advance mental health care directive; and

8 (5) Relative means the spouse, child, parent, sibling, grandchild,
9 or grandparent, by blood, marriage, or adoption, of an individual.

10 Sec. 5. (1) An advance mental health care directive shall:

11 (a) Be in writing;

12 (b) Be dated and signed by the principal or, subject to subsection
13 (5) of this section, another individual acting at the direction of the
14 principal if the principal is physically unable to sign. The attorney in
15 fact of the principal may not sign the directive for the principal;

16 (c) State whether the principal wishes to be able to revoke the
17 directive at any time or whether the directive remains irrevocable during
18 periods of incapacity. Failure to clarify whether the directive is
19 revocable does not render it unenforceable. If the directive fails to
20 state whether it is revocable or irrevocable, the principal may revoke it
21 at any time;

22 (d) State that the principal affirms that the principal is aware of
23 the nature of the directive and signs the directive freely and
24 voluntarily; and

25 (e)(i) Be signed in the presence of a notary public who is not the
26 attorney in fact of the principal; or

27 (ii) Be witnessed in writing by at least two disinterested adults as
28 provided in subsections (4) and (5) of this section.

29 (2) An advanced mental health care directive shall be valid upon
30 execution.

31 (3) To be irrevocable during periods of incapacity, the directive

1 shall state that the directive remains irrevocable during periods of
2 incapacity.

3 (4) A witness shall not be:

4 (a) The principal's attending physician or a member of the
5 principal's mental health treatment team at the time of executing the
6 directive;

7 (b) The principal's spouse, parent, child, grandchild, sibling,
8 presumptive heir, or known devisee at the time of the witnessing;

9 (c) In a romantic or dating relationship with the principal;

10 (d) The attorney in fact of the principal or a person designated to
11 make mental health care decisions for the principal; or

12 (e) The owner, operator, employee, or relative of an owner or
13 operator of a treatment facility at which the principal is receiving
14 care.

15 (5) Each witness shall attest that:

16 (a) The witness was present when the principal signed the directive
17 or, if the principal was physically unable to sign the directive, when
18 another individual signed the directive as provided in subdivision (1)(b)
19 of this section;

20 (b) The principal did not appear incapacitated or under undue
21 influence or duress when the directive was signed; and

22 (c) The principal presented identification or the witness personally
23 knew the principal when the directive was signed.

24 (6) A principal may, in compliance with the federal Health Insurance
25 Portability and Accountability Act of 1996, include in the directive a
26 release authorization form stating the name of persons to whom
27 information regarding the mental health treatment of the principal may be
28 disclosed during the time the directive is activated, including, but not
29 limited to, health care professionals, mental health care professionals,
30 family, friends, and other interested persons with whom treatment
31 providers are allowed to communicate if the principal loses capacity.

1 Sec. 6. (1) Except as provided in subsection (2) of this section,
2 in an advance mental health care directive, a principal may issue
3 instructions, preferences, or both instructions and preferences
4 concerning the principal's mental health treatment. If the principal has
5 designated an attorney in fact under a power of attorney for health care,
6 the advance mental health care directive shall be binding on the
7 principal's attorney in fact. The instructions and preferences may
8 address matters including, but not limited to:

9 (a) Consent to or refusal of specific types of mental health
10 treatment, such as inpatient mental health treatment, psychotropic
11 medication, or electroconvulsive therapy. Consent to electroconvulsive
12 therapy must be express;

13 (b) Treatment facilities and care providers;

14 (c) Alternatives to hospitalization if twenty-four-hour care is
15 deemed necessary;

16 (d) Physicians who will provide treatment;

17 (e) Medications for psychiatric treatment;

18 (f) Emergency interventions, including seclusion, restraint, or
19 medication;

20 (g) The provision of trauma-informed care and treatment;

21 (h) In compliance with the federal Health Insurance Portability and
22 Accountability Act of 1996, a release authorization form stating the name
23 of persons to whom information regarding the mental health treatment of
24 the principal may be disclosed during the time the directive is
25 activated, including persons who should be notified immediately of
26 admission to an inpatient facility;

27 (i) Individuals who should be prohibited from visitation; and

28 (j) Other instructions or preferences regarding mental health care.

29 (2) A principal may not consent to or authorize an attorney in fact
30 to consent to psychosurgery in a directive. If such consent or
31 authorization is expressed in the directive, this does not revoke the

1 entire directive, but such a provision is unenforceable.

2 Sec. 7. (1) An advance mental health care directive, including an
3 irrevocable advance mental health care directive, shall remain in effect
4 until it expires according to its terms or until it is revoked by the
5 principal, whichever is earlier.

6 (2) A principal may revoke the directive even if the principal is
7 incapacitated unless the principal has made the directive irrevocable
8 during periods of incapacity pursuant to subsection (3) of section 5 of
9 this act.

10 (3) A principal with capacity or a principal without capacity who
11 did not make the directive irrevocable during periods of incapacity may
12 revoke the directive by:

13 (a) A written statement revoking the directive; or

14 (b) A subsequent directive that revokes the original directive. If
15 the subsequent directive does not revoke the original directive in its
16 entirety, only inconsistent provisions in the original directive are
17 revoked.

18 (4) When a principal with capacity consents to treatment that is
19 different than the treatment requested in the directive or refuses
20 treatment that the principal requested in the directive, this consent or
21 refusal does not revoke the entire directive but is a waiver of the
22 inconsistent provision.

23 Sec. 8. (1) A principal has a right to form a self-binding
24 arrangement for mental health care in an advance mental health care
25 directive. A self-binding arrangement allows the principal to obtain
26 mental health treatment in the event that an acute mental health episode
27 renders the principal incapacitated and induces the principal to refuse
28 treatment.

29 (2) To provide advance consent to inpatient treatment despite the
30 principal's illness-induced refusal, a principal shall, in such
31 directive:

1 (a) Make the directive irrevocable pursuant to subsection (3) of
2 section 5 of this act; and

3 (b) Consent to admission to an inpatient treatment facility.

4 (3) To provide advance consent to administration of psychotropic
5 medication despite the principal's illness-induced refusal of medication,
6 a principal shall, in such directive:

7 (a) Make the directive irrevocable pursuant to subsection (3) of
8 section 5 of this act; and

9 (b) Consent to administration of psychotropic medication.

10 Sec. 9. (1) Unless a principal designates otherwise in the advance
11 mental health care directive, a directive becomes active when the
12 principal loses capacity. Activation is the point at which the directive
13 shall be used as the basis for decisionmaking and shall dictate mental
14 health treatment of the principal.

15 (2) The principal may designate in the directive an activation
16 standard other than incapacity by describing the circumstances under
17 which the directive becomes active.

18 Sec. 10. (1) Except as otherwise provided in subsection (2) of this
19 section, a specific grant of authority to an attorney in fact to consent
20 to the principal's inpatient mental health treatment or psychotropic
21 medication is not required to convey authority to the attorney in fact to
22 consent to such treatments. An attorney in fact may consent to such
23 treatments for the principal if the principal's written grant of
24 authority in the principal's advance mental health care directive is
25 sufficiently broad to encompass these decisions.

26 (2) When an incapacitated principal refuses inpatient mental health
27 treatment or psychotropic medication, the principal's attorney in fact
28 only has the authority to consent to such treatments for the principal if
29 the principal's directive is irrevocable and expressly authorizes the
30 attorney in fact to consent to the applicable treatment. An attorney in
31 fact shall only have the authority to consent to electroconvulsive

1 therapy for the principal if the principal's directive is irrevocable and
2 expressly authorizes the attorney in fact to consent to electroconvulsive
3 therapy.

4 (3) An attorney in fact's decisions for the principal must be in
5 good faith and consistent with the principal's instructions expressed in
6 the principal's directive. If the directive fails to address an issue,
7 the attorney in fact shall make decisions in accordance with the
8 principal's instructions or preferences otherwise known to the attorney
9 in fact. If the attorney in fact does not know the principal's
10 instructions or preferences, the attorney in fact shall make decisions in
11 the best interests of the principal.

12 (4) If the principal grants the attorney in fact authority to make
13 decisions for the principal in circumstances in which the principal still
14 has capacity, the principal's decisions when the principal has capacity
15 shall nonetheless override the attorney in fact's decisions.

16 Sec. 11. (1) Despite activation, an advance mental health care
17 directive, including an irrevocable directive, shall not prevail over
18 contemporaneous preferences expressed by a principal who has capacity.

19 (2) If an individual has a power of attorney for health care and an
20 advance mental health care directive and there is any conflict between
21 the two documents, the advance mental health care directive controls with
22 regard to any mental health care instructions or preferences.

23 Sec. 12. (1) If the principal forms a self-binding arrangement for
24 treatment in an advance mental health care directive but then refuses
25 admission to an inpatient treatment facility despite the directive's
26 instructions to admit, the inpatient treatment facility shall respond as
27 follows:

28 (a) The facility shall, as soon as practicable, obtain the informed
29 consent of the principal's attorney in fact, if the principal has an
30 attorney in fact;

31 (b) Two licensed physicians shall, within twenty-four hours after

1 the principal's arrival at the facility, evaluate the principal to
2 determine whether the principal has capacity and shall document in the
3 principal's medical record a summary of findings, evaluations, and
4 recommendations; and

5 (c) If the evaluating physicians determine the principal lacks
6 capacity, the principal shall be admitted into the inpatient treatment
7 facility pursuant to the principal's directive.

8 (2) After twenty-one days following the date of admission, if the
9 principal has not regained capacity or has regained capacity but refuses
10 to consent to remain for additional treatment, the facility shall dismiss
11 the principal from the facility's care and the principal shall be
12 released during daylight hours or to the care of an individual available
13 only during nondaylight hours. This subsection does not apply if the
14 principal is detained pursuant to involuntary commitment standards.

15 (3) A principal may specify in the advance mental health care
16 directive a shorter amount of time than twenty-one days.

17 Sec. 13. If a principal with an irrevocable advance mental health
18 care directive consenting to inpatient treatment refuses psychotropic
19 medication through words or actions, psychotropic medication may only be
20 administered by or under the immediate direction of a licensed
21 psychiatrist, and only if:

22 (1) The principal expressly consented to psychotropic medication in
23 the principal's irrevocable directive;

24 (2) The principal's attorney in fact, if the principal has an
25 attorney in fact, consents to psychotropic medication; and

26 (3) Two of the following health care professionals recommend, in
27 writing, treatment with the specific psychotropic medication: A licensed
28 psychiatrist, physician, physician assistant, or advanced practice
29 registered nurse or any other health care professional licensed to
30 diagnose illnesses and prescribe drugs for mental health care.

31 Sec. 14. (1) A health care professional acting or declining to act,

1 in accord with reasonable medical standards, in good faith reliance upon
2 the principal's advance mental health care directive, and, if the
3 principal has an attorney in fact, in reliance upon the decision made by
4 a person whom the health care professional in good faith believes is the
5 attorney in fact acting pursuant to the advance mental health care
6 directive, shall not be subject to criminal prosecution, civil liability,
7 or discipline for unprofessional conduct for so acting or declining to
8 act.

9 (2) In the absence of knowledge of the revocation of an advance
10 mental health care directive, a health care professional who acts or
11 declines to act based upon the advance mental health care directive and
12 in accord with reasonable medical standards shall not be subject to
13 criminal prosecution, civil liability, or discipline for unprofessional
14 conduct for so acting or declining to act.

15 (3) Nothing in the Advance Mental Health Care Directives Act shall
16 limit the liability of an attorney in fact or a health care professional
17 for a negligent act or omission.

18 Sec. 15. (1) An advance mental health care directive shall be in a
19 form that complies with the Advance Mental Health Care Directives Act and
20 may be in the form provided in this subsection.

21 ADVANCE MENTAL HEALTH CARE DIRECTIVE

22 I, being an adult nineteen years of age or older
23 and of sound mind, freely and voluntarily make this directive for mental
24 health care to be followed if it is determined that my ability to receive
25 and evaluate information effectively or communicate decisions is impaired
26 to such an extent that I lack the capacity to refuse or consent to mental
27 health care. "Mental health care" includes, but is not limited to,
28 treatment of mental illness with psychotropic medication, admission to
29 and retention in a treatment facility for a period up to 21 days, or
30 electroconvulsive therapy.

31 I understand that I may become incapable of giving or withholding

1 informed consent for mental health care due to the symptoms of a
2 diagnosed mental disorder. These symptoms may include, but not be limited
3 to:

4
5

6 PSYCHOTROPIC MEDICATIONS

7 If I become incapable of giving or withholding informed consent for
8 mental health care, my wishes regarding psychotropic medications,
9 including classes of medications if appropriate, are as follows (check
10 one or both of the following, if applicable):

11 [] I consent to the administration of the following medications:
12
13

14 [] I do not consent to the administration of the following
15 medications:
16
17

18 Conditions or limitations, if any:
19
20

21 ADMISSION TO AND RETENTION IN FACILITY

22 If I become incapable of giving or withholding informed consent for
23 mental health care, my wishes regarding admission to and retention in a
24 health care facility for mental health care are as follows (check one of
25 the following, if applicable):

26 [] I consent to being admitted to a treatment facility for mental
27 health care.

28 [] I do not consent to being admitted to a treatment facility for
29 mental health care.

30 This directive cannot, by law, provide consent to retain me in a
31 treatment facility for more than 21 days.

1 your identity and who are present when you sign or acknowledge your
2 signature.

3 SELECTION OF PHYSICIAN

4 (OPTIONAL)

5 If it becomes necessary to determine if I have become incapable of
6 giving or withholding informed consent for mental health care, I
7 choose of (address of
8 licensed physician) to be one of the two licensed physicians who will
9 determine whether I am incapable. If that licensed physician is
10 unavailable, that physician's designee shall serve as one of the two
11 licensed physicians who will determine whether I am incapable.

12 ADDITIONAL REFERENCES OR INSTRUCTIONS

13

14

15 Conditions or limitations, if any:

16

17

18 This document will continue in effect until you revoke it as
19 described below or until a date you designate in this document. If you
20 wish to have this document terminate on a certain date, please indicate:

21

22 (Date of expiration of directive) (Signature of Principal)

23

24 (Printed Name of Principal)

25

26 (Date signed)

27 THIS DOCUMENT MUST BE SIGNED IN THE PRESENCE OF WITNESSES
28 OR SIGNED IN THE PRESENCE OF A NOTARY PUBLIC. COMPLETE THE

29 APPROPRIATE PORTION WHICH FOLLOWS:

30 AFFIRMATION OF WITNESSES

1 came, personally to me known to be the identical person whose
2 name is affixed to the above advance mental health care directive as
3 principal, and I declare that such person appears in sound mind and not
4 under duress or undue influence, that such person acknowledges the
5 execution of the same to be such person's voluntary act and deed, and
6 that I am not the attorney in fact of the principal designated by any
7 power of attorney for health care.

8 Witness my hand and notarial seal at in such county the
9 day and year last above written.

10

11 Seal Signature of Notary Public

12 NOTICE TO PERSON MAKING AN ADVANCE MENTAL HEALTH CARE DIRECTIVE

13 This is an important legal document. It creates an advance mental
14 health care directive. Before signing this document, you should know
15 these important facts:

16 This document allows you to make decisions in advance about mental
17 health care, including administration of psychotropic medication, short-
18 term (up to 21 days) admission to a treatment facility, and use of
19 electroconvulsive therapy. The instructions that you include in this
20 advance mental health care directive will be followed only if you are
21 incapable of making treatment decisions. Otherwise, you will be
22 considered capable to give or withhold consent for the treatments.

23 If you have an attorney in fact appointed under a power of attorney
24 for health care, your attorney in fact has a duty to act consistent with
25 your desires as stated in this document or, if your desires are not
26 stated or otherwise made known to the attorney in fact, to act in a
27 manner consistent with what your attorney in fact in good faith believes
28 to be in your best interest. The person has the right to withdraw from
29 acting as your attorney in fact at any time.

30 You have the right to revoke this document in whole or in part at
31 any time you have been determined to be capable of giving or withholding

1 informed consent for mental health care. A revocation is effective when
2 it is communicated to your attending health care professional in writing
3 and is signed by you. The revocation may be in a form similar to the
4 following:

5 REVOCATION

6 I,, knowingly and voluntarily revoke
7 my advance mental health care directive as indicated (check one of the
8 following):

9 I revoke my entire directive.

10 I revoke the following portion or portions of my directive:

11
12

13

(Signature of Principal)

15

(Printed Name of Principal)

17

(Date)

19 EVALUATION BY HEALTH CARE PROFESSIONAL

20 (OPTIONAL)

21 I,, have evaluated the principal
22 and determined that the principal is capable of giving or withholding
23 informed consent for mental health care.

24

(Signature of health care professional)

26

(Printed Name of health care professional)

28

(Date)

30 (2) The Department of Health and Human Services may adopt and

1 promulgate rules and regulations to provide information to the public
2 regarding the Advance Mental Health Care Directives Act. The rules and
3 regulations may include information relating to the need to review and
4 update an advance mental health care directive in a timely manner and the
5 creation of a wellness recovery action plan upon dismissal from a
6 treatment facility for ongoing mental health issues and rehabilitation
7 goals. The department shall publish the form in this section on its web
8 site for use by the public.

9 Sec. 16. Section 30-3402, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 30-3402 For purposes of sections 30-3401 to 30-3432:

12 (1) Adult shall mean any person who is nineteen years of age or
13 older or who is or has been married;

14 (2) Attending physician shall mean the physician, selected by or
15 assigned to a principal, who has primary responsibility for the care and
16 treatment of such principal;

17 (3) Attorney in fact shall mean an adult properly designated and
18 authorized under sections 30-3401 to 30-3432 to make health care
19 decisions for a principal pursuant to a power of attorney for health care
20 and shall include a successor attorney in fact;

21 (4) Health care shall mean any treatment, procedure, or intervention
22 to diagnose, cure, care for, or treat the effects of disease, injury, and
23 degenerative conditions. Heath care shall include mental health care;

24 (5) Health care decision shall include consent, refusal of consent,
25 or withdrawal of consent to health care. Health care decision shall not
26 include (a) the withdrawal or withholding of routine care necessary to
27 maintain patient comfort, (b) the withdrawal or withholding of the usual
28 and typical provision of nutrition and hydration, or (c) the withdrawal
29 or withholding of life-sustaining procedures or of artificially
30 administered nutrition or hydration, except as provided by sections
31 30-3401 to 30-3432;

1 (6) Health care provider shall mean an individual or facility
2 licensed, certified, or otherwise authorized or permitted by law to
3 administer health care in the ordinary course of business or professional
4 practice and shall include all facilities defined in the Health Care
5 Facility Licensure Act;

6 (7) Except as otherwise provided in section 4 of this act for an
7 advance mental health care directive, incapable ~~Incapable~~ shall mean the
8 inability to understand and appreciate the nature and consequences of
9 health care decisions, including the benefits of, risks of, and
10 alternatives to any proposed health care or the inability to communicate
11 in any manner an informed health care decision;

12 (8) Life-sustaining procedure shall mean any medical procedure,
13 treatment, or intervention that (a) uses mechanical or other artificial
14 means to sustain, restore, or supplant a spontaneous vital function and
15 (b) when applied to a person suffering from a terminal condition or who
16 is in a persistent vegetative state, serves only to prolong the dying
17 process. Life-sustaining procedure shall not include routine care
18 necessary to maintain patient comfort or the usual and typical provision
19 of nutrition and hydration;

20 (9) Mental health care shall include, but not be limited to, mental
21 health care and treatment expressly provided for in the Advance Mental
22 Health Care Directives Act;

23 (10) ~~(9)~~ Persistent vegetative state shall mean a medical condition
24 that, to a reasonable degree of medical certainty as determined in
25 accordance with currently accepted medical standards, is characterized by
26 a total and irreversible loss of consciousness and capacity for cognitive
27 interaction with the environment and no reasonable hope of improvement;

28 (11) ~~(10)~~ Power of attorney for health care shall mean a power of
29 attorney executed in accordance with sections 30-3401 to 30-3432 which
30 authorizes a designated attorney in fact to make health care decisions
31 for the principal when the principal is incapable;

1 (12) ~~(11)~~ Principal shall mean an adult who, when competent, confers
2 upon another adult a power of attorney for health care;

3 (13) ~~(12)~~ Reasonably available shall mean that a person can be
4 contacted with reasonable efforts by an attending physician or another
5 person acting on behalf of the attending physician;

6 (14) ~~(13)~~ Terminal condition shall mean an incurable and
7 irreversible medical condition caused by injury, disease, or physical
8 illness which, to a reasonable degree of medical certainty, will result
9 in death regardless of the continued application of medical treatment
10 including life-sustaining procedures; and

11 (15) ~~(14)~~ Usual and typical provision of nutrition and hydration
12 shall mean delivery of food and fluids orally, including by cup, eating
13 utensil, bottle, or drinking straw.

14 Sec. 17. Section 30-3405, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 30-3405 (1)(a) ~~(1)~~ The following shall not qualify to witness a
17 power of attorney for health care: Any person who at the time of
18 witnessing is the ~~The~~ principal's spouse, parent, child, grandchild,
19 sibling, presumptive heir, known devisee ~~at the time of the witnessing,~~
20 attending physician, mental health treatment team member, romantic or
21 dating partner, or attorney in fact; or an employee of a life or health
22 insurance provider for the principal.

23 (b) No more than one witness may be an administrator or employee of
24 a health care provider who is caring for or treating the principal.

25 (2) Each witness shall make the written declaration in substantially
26 the form prescribed in section 30-3408.

27 Sec. 18. Section 30-3406, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 30-3406 None of the following may serve as an attorney in fact:

30 (1) The attending physician or a member of the mental health
31 treatment team of the principal;

1 (2) An employee of the attending physician or a member of the mental
2 health treatment team of the principal who is unrelated to the principal
3 by blood, marriage, or adoption;

4 (3) A person unrelated to the principal by blood, marriage, or
5 adoption who is an owner, operator, or employee of a health care provider
6 in or of which the principal is a patient or resident; and

7 (4) A person unrelated to the principal by blood, marriage, or
8 adoption if, at the time of the proposed designation, he or she is
9 presently serving as an attorney in fact for ten or more principals.

10 Sec. 19. Section 30-3408, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 30-3408 (1) A power of attorney for health care executed on or after
13 September 9, 1993, shall be in a form which complies with sections
14 30-3401 to 30-3432 and may be in the form provided in this subsection.

15 POWER OF ATTORNEY FOR HEALTH CARE

16 I appoint, whose address is, and
17 whose telephone number is, as my attorney in fact for health
18 care. I appoint, whose address
19 is, and whose telephone number
20 is, as my successor attorney in fact for health care. I
21 authorize my attorney in fact appointed by this document to make health
22 care decisions for me when I am determined to be incapable of making my
23 own health care decisions. I have read the warning which accompanies this
24 document and understand the consequences of executing a power of attorney
25 for health care.

26 I direct that my attorney in fact comply with the following
27 instructions or limitations:

28 I direct that my attorney in fact comply with the following
29 instructions on life-sustaining treatment:
30 (optional)

31 I direct that my attorney in fact comply with the following

1 instructions on artificially administered nutrition and hydration:
2 (optional)

3 I HAVE READ THIS POWER OF ATTORNEY FOR HEALTH CARE. I UNDERSTAND
4 THAT IT ALLOWS ANOTHER PERSON TO MAKE LIFE AND DEATH DECISIONS FOR ME IF
5 I AM INCAPABLE OF MAKING SUCH DECISIONS. I ALSO UNDERSTAND THAT I CAN
6 REVOKE THIS POWER OF ATTORNEY FOR HEALTH CARE AT ANY TIME BY NOTIFYING MY
7 ATTORNEY IN FACT, MY PHYSICIAN, OR THE FACILITY IN WHICH I AM A PATIENT
8 OR RESIDENT. I ALSO UNDERSTAND THAT I CAN REQUIRE IN THIS POWER OF
9 ATTORNEY FOR HEALTH CARE THAT THE FACT OF MY INCAPACITY IN THE FUTURE BE
10 CONFIRMED BY A SECOND PHYSICIAN.

11
12 (Signature of person making designation/date)

13 DECLARATION OF WITNESSES

14 We declare that the principal is personally known to us, that the
15 principal signed or acknowledged his or her signature on this power of
16 attorney for health care in our presence, that the principal appears to
17 be of sound mind and not under duress or undue influence, and that
18 neither of us nor the principal's attending physician is the person
19 appointed as attorney in fact by this document.

20 Witnessed By:

21
22 (Signature of Witness/Date) (Printed Name of Witness)

23
24 (Signature of Witness/Date) (Printed Name of Witness)

25 OR

26 State of Nebraska,)

27)ss.

28 County of)

29 On this day of 20...., before me,, a
30 notary public in and for County, personally

1 came, personally to me known to be the identical person whose
2 name is affixed to the above power of attorney for health care as
3 principal, and I declare that he or she appears in sound mind and not
4 under duress or undue influence, that he or she acknowledges the
5 execution of the same to be his or her voluntary act and deed, and that I
6 am not the attorney in fact or successor attorney in fact designated by
7 this power of attorney for health care.

8 Witness my hand and notarial seal at in such county the
9 day and year last above written.

10
11 Seal Signature of Notary Public

12 (2) A power of attorney for health care may be included in a durable
13 power of attorney drafted under the Nebraska Uniform Power of Attorney
14 Act or in any other form if the power of attorney for health care
15 included in such durable power of attorney or any other form fully
16 complies with the terms of section 30-3404.

17 (3) A power of attorney for health care executed prior to January 1,
18 1993, shall be effective if it fully complies with the terms of section
19 30-3404.

20 (4) A power of attorney for health care which is executed in another
21 state and is valid under the laws of that state shall be valid according
22 to its terms.

23 (5) A power of attorney for health care may include an advance
24 mental health care directive under the Advance Mental Health Care
25 Directives Act.

26 Sec. 20. Section 30-3423, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 30-3423 (1) An attorney in fact shall not be guilty of any criminal
29 offense, subject to any civil liability, or in violation of any
30 professional oath or code of ethics or conduct for any action taken in
31 good faith pursuant to a power of attorney for health care or an advance

1 mental health care directive under the Advance Mental Health Care
2 Directives Act.

3 (2) No attending physician or health care provider acting or
4 declining to act in reliance upon the decision made by a person whom the
5 attending physician or health care provider in good faith believes is the
6 attorney in fact for health care shall be subject to criminal
7 prosecution, civil liability, or professional disciplinary action.
8 Nothing in sections 30-3401 to 30-3432, however, shall limit the
9 liability of an attending physician or health care provider for a
10 negligent act or omission in connection with the medical diagnosis,
11 treatment, or care of the principal.

12 Sec. 21. Original sections 30-3402, 30-3405, 30-3406, 30-3408, and
13 30-3423, Reissue Revised Statutes of Nebraska, are repealed.