

AMENDMENTS TO LB66

Introduced by DeBoer, 10.

1 1. Strike the original sections and insert the following new
2 sections:

3 **Section 1.** (UHCD 1) Sections 1 to 30 of this act shall be known
4 and may be cited as the Nebraska Uniform Health-Care Decisions Act.

5 **Sec. 2.** (UHCD 2) In the Nebraska Uniform Health-Care Decisions
6 Act:

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

10 (2) Advance mental health-care directive means a power of attorney
11 for health care, health-care instruction, or both, created under section
12 9 of this act.

13 (3) Agent means an individual appointed under a power of attorney
14 for health care to make a health-care decision for the individual who
15 made the appointment. The term includes a co-agent or alternate agent
16 appointed under section 20 of this act.

17 (4) Capacity means having capacity under section 3 of this act.

18 (5) Cohabitant means each of two individuals who have been living
19 together as a couple for at least one year after each became an adult or
20 was emancipated and who are not married to each other.

21 (6) Default surrogate means an individual authorized under section
22 12 of this act to make a health-care decision for another individual.

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

26 (8) Family member means a spouse, adult child, parent, or
27 grandparent, or an adult descendant of a spouse, child, parent, or

1 grandparent.

2 (9) Guardian means a person appointed under other law by a court to
3 make decisions regarding the personal affairs of an individual, which may
4 include health-care decisions. The term does not include a guardian ad
5 litem.

6 (10) Health care means care or treatment or a service or procedure
7 to maintain, monitor, diagnose, or otherwise affect an individual's
8 physical or mental illness, injury, or condition. The term includes
9 mental health care.

10 (11) Health-care decision means a decision made by an individual or
11 the individual's surrogate regarding the individual's health care,
12 including:

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

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

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

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

23 (13) Health-care instruction means a direction, whether or not in a
24 record, made by an individual that indicates the individual's goals,
25 preferences, or wishes concerning the provision, withholding, or
26 withdrawal of health care. The term includes a direction intended to be
27 effective if a specified condition arises.

28 (14) Health-care professional means a physician or other individual
29 licensed, certified, or otherwise authorized or permitted by other law of
30 this state to provide health care in this state in the ordinary course of
31 business or the practice of the physician's or individual's profession.

1 (15) Individual means an adult or emancipated minor.

2 (16) Mental health care means care or treatment or a service or
3 procedure to maintain, monitor, diagnose, or otherwise affect an
4 individual's mental illness or other psychiatric, psychological, or
5 psychosocial condition.

6 (17) Nursing home means a nursing facility as defined in section
7 1919(a)(1) of the Social Security Act, 42 U.S.C. 1396r(a)(1), as amended,
8 or skilled nursing facility as defined in section 1819(a)(1) of the
9 Social Security Act, 42 U.S.C. 1395i-3(a)(1), as amended.

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

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

14 (A) the individual's surrogate;

15 (B) a family member of the individual;

16 (C) the cohabitant of the individual;

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

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

21 (F) a person that has an ongoing personal or professional
22 relationship with the individual, including a person that has provided
23 educational or health-care services or supported decisionmaking to the
24 individual.

25 (20) Physician means an individual authorized to practice as a
26 physician or an osteopathic physician under the Medicine and Surgery
27 Practice Act.

28 (21) Power of attorney for health care means a record in which an
29 individual appoints an agent to make health-care decisions for the
30 individual.

31 (22) Reasonably available means being able to be contacted without

1 undue effort and being willing and able to act in a timely manner
2 considering the urgency of an individual's health-care situation. When
3 used to refer to an agent or default surrogate, the term includes being
4 willing and able to comply with the duties under section 17 of this act
5 in a timely manner considering the urgency of an individual's health-care
6 situation.

7 (23) Record means information:

8 (A) inscribed on a tangible medium; or

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

11 (24) Responsible health-care professional means:

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

15 (B) in the absence of a designation under subdivision (A) or, if the
16 professional designated under subdivision (A) is not reasonably
17 available, a health-care professional who has primary responsibility for
18 overseeing the individual's health care or for overseeing a course of
19 treatment.

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

22 (A) to execute or adopt a tangible symbol; or

23 (B) to attach to or logically associate with the record an
24 electronic symbol, sound, or process.

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

29 (27) Supported decisionmaking means assistance, from one or more
30 persons of an individual's choosing, that helps the individual make or
31 communicate a decision, including by helping the individual understand

1 the nature and consequences of the decision.

2 (28) Surrogate means:

3 (A) an agent;

4 (B) a default surrogate; or

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

6 **Sec. 3.** (UHCDA 3) (a) An individual has capacity for the purpose of
7 the Nebraska Uniform Health-Care Decisions Act if the individual:

8 (1) is willing and able to communicate a decision independently or
9 with appropriate services, technological assistance, supported
10 decisionmaking, or other reasonable accommodation; and

11 (2) in making or revoking:

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

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

18 (C) an appointment of an agent under a health-care power of attorney
19 or identification of a default surrogate under subdivision (b)(1) of
20 section 12 of this act, recognizes the identity of the individual being
21 appointed or identified and understands the general nature of the
22 relationship of the individual making the appointment or identification
23 with the individual being appointed or identified.

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

27 **Sec. 4.** (UHCDA 4) (a) An individual is presumed to have capacity to
28 make or revoke a health-care decision, health-care instruction, and power
29 of attorney for health care unless:

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

31 (2) the presumption is rebutted under subsection (b) of this

1 section.

2 (b) Subject to sections 5 and 6 of this act, a presumption under
3 subsection (a) of this section may be rebutted by a finding that the
4 individual lacks capacity:

5 (1) subject to subsection (c) of this section, made on the basis of
6 a contemporaneous examination by any of the following:

7 (A) a physician;

8 (B) a psychologist licensed or otherwise authorized to practice in
9 this state;

10 (C) an individual with training and expertise in the finding of lack
11 of capacity who is licensed or otherwise authorized to practice in this
12 state as:

13 (i) a physician assistant;

14 (ii) an advanced practice registered nurse; or

15 (iii) a social worker; or

16 (D) a responsible health-care professional not described in
17 subdivision (A), (B), or (C) if:

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

22 (ii) an individual listed in subdivision (A), (B), or (C) is not
23 reasonably available;

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

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

30 (c) The finding under subsection (b) of this section may not be made
31 by:

- 1 (1) a family member of the individual presumed to have capacity;
2 (2) the cohabitant of the individual or a descendant of the
3 cohabitant; or
4 (3) the individual's surrogate, a family member of the surrogate, or
5 a descendant of the surrogate.

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

12 **Sec. 5. (UHCDA 5) (a) As soon as reasonably feasible, an individual**
13 who makes a finding under subsection (b) of section 4 of this act shall
14 inform the individual about whom the finding was made or the individual's
15 responsible health-care professional of the finding.

16 (b) As soon as reasonably feasible, a responsible health-care
17 professional who is informed of a finding under subsection (b) of section
18 4 of this act shall inform the individual about whom the finding was made
19 and the individual's surrogate.

20 (c) An individual found under subsection (b) of section 4 of this
21 act to lack capacity may object to the finding:

- 22 (1) by orally informing a responsible health-care professional;
23 (2) in a record provided to a responsible health-care professional
24 or the health-care institution in which the individual resides or is
25 receiving care; or
26 (3) by another act that clearly indicates the individual's
27 objection.

28 (d) If the individual objects under subsection (c) of this section,
29 the finding under subsection (b) of section 4 of this act is not
30 sufficient to rebut a presumption of capacity in subsection (a) of
31 section 4 of this act and the individual must be treated as having

1 capacity unless:

2 (1) the individual withdraws the objection;

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

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

7 (4) subject to subsection (e) of this section, the finding is
8 confirmed by a second finding made by an individual authorized under
9 subdivision (b)(1) of section 4 of this act who:

10 (A) did not make the first finding;

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

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

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

20 (f) As soon as reasonably feasible, a health-care professional who
21 is informed of an objection under subsection (c) of this section shall:

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

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

30 **Sec. 6.** (UHCDA 6) (a) An individual found under subsection (b) of
31 section 4 of this act to lack capacity, a responsible health-care

1 professional, the health-care institution providing health care to the
2 individual, or a person interested in the welfare of the individual may
3 petition the county court in the county in which the individual resides
4 or is located to determine whether the individual lacks capacity.

5 (b) The court in which a petition under subsection (a) of this
6 section is filed shall appoint legal counsel to represent the individual
7 if the individual does not have legal counsel. The court shall hear the
8 petition as soon as possible, but not later than seven days after the
9 petition is filed. As soon as possible, but not later than seven days
10 after the hearing, the court shall determine whether the individual lacks
11 capacity. The court may determine the individual lacks capacity only if
12 the court finds by clear and convincing evidence that the individual
13 lacks capacity.

14 **Sec. 7.** (UHCDA 7) (a) An individual may create a health-care
15 instruction that expresses the individual's preferences for future health
16 care, including preferences regarding:

- 17 (1) health-care professionals or health-care institutions;
18 (2) how a health-care decision will be made and communicated;
19 (3) persons that should or should not be consulted regarding a
20 health-care decision;
21 (4) a person to serve as guardian for the individual if one is
22 appointed; and
23 (5) an individual to serve as a default surrogate.

24 (b) A health-care professional to whom an individual communicates or
25 provides an instruction under subsection (a) of this section shall
26 document the instruction and the date of the instruction in the
27 individual's medical record or communicate the instruction and date of
28 the instruction to an administrator with responsibility for medical
29 records of the health-care institution providing health care to the
30 individual, who shall document the instruction and the date of the
31 instruction in the individual's medical record.

1 (c) A health-care instruction made by an individual that conflicts
2 with an earlier health-care instruction made by the individual, including
3 an instruction documented in a medical order, revokes the earlier
4 instruction to the extent of the conflict.

5 (d) A health-care instruction may be in the same record as a power
6 of attorney for health care.

7 **Sec. 8.** (UHCD 8) (a) An individual may create a power of attorney
8 for health care to appoint an agent to make health-care decisions for the
9 individual.

10 (b) An individual is disqualified from acting as agent for an
11 individual who lacks capacity to make health-care decisions if:

12 (1) a court finds that the potential agent poses a danger to the
13 individual's well-being, even if the court does not issue a protection
14 order against the potential agent; or

15 (2) the potential agent is an owner, operator, employee, or
16 contractor of a nursing home or an assisted-living facility as defined in
17 section 71-5903 in which the individual resides or is receiving care,
18 unless the owner, operator, employee, or contractor is a family member of
19 the individual, the cohabitant of the individual, or a descendant of the
20 cohabitant.

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

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

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

27 (2) is not:

28 (A) the agent appointed by the individual;

29 (B) the agent's spouse or cohabitant;

30 (C) if the individual resides or is receiving care in a nursing home
31 or an assisted-living facility as defined in section 71-5903, the owner,

1 operator, employee, or contractor of the nursing home or assisted-living
2 facility; and

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

6 (e) A witness under subsection (d) of this section is considered
7 present if the witness and the individual are:

8 (1) physically present in the same location;

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

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

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

17 (B) the witness is able to authenticate the identity of the
18 individual by receiving accurate answers from the individual that enable
19 the authentication.

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

22 **Sec. 9.** (UHCDA 9) (a) An individual may create an advance health-
23 care directive that addresses only mental health care for the individual.
24 The directive may include a health-care instruction, a power of attorney
25 for health care, or both.

26 (b) A health-care instruction under this section may include the
27 individual's:

28 (1) general philosophy and objectives regarding mental health care;
29 and

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

- 1 (A) preferences regarding professionals, programs, and facilities;
2 (B) admission to a mental-health facility, including duration of
3 admission;
4 (C) preferences regarding medications;
5 (D) refusal to accept a specific type of mental health care,
6 including a medication; and
7 (E) preferences regarding crisis intervention.
8 (c) A power of attorney for health care under this section may
9 appoint an agent to make decisions only for mental health care.
10 (d) An individual may direct in an advance mental health-care
11 directive that, if the individual is experiencing a psychiatric or
12 psychological event specified in the directive, the individual may not
13 revoke the directive or a part of the directive.
14 (e) If an advance mental health-care directive includes a direction
15 under subsection (d) of this section, the advance mental health-care
16 directive must be in a record that is separate from any other advance
17 health-care directive created by the individual and signed by the
18 individual creating the advance mental health-care directive and at least
19 two adult witnesses who:
20 (1) attest that to the best of their knowledge the individual:
21 (A) understood the nature and consequences of the direction,
22 including its risks and benefits; and
23 (B) made the direction voluntarily and without coercion or undue
24 influence;
25 (2) are not:
26 (A) the agent appointed by the individual;
27 (B) the agent's spouse or cohabitant; and
28 (C) if the individual resides in a nursing home or an assisted-
29 living facility as defined in section 71-5903, the owner, operator,
30 employee, or contractor of the nursing home or assisted-living facility
31 as defined in section 71-5903; and

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

2 **Sec. 10.** (UHCDA 10) (a) If a direction in an advance mental health-
3 care directive of an individual conflicts with a direction in another
4 advance health-care directive of the individual, the later direction
5 revokes the earlier direction to the extent of the conflict.

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

12 (c) An appointment of an agent to make health-care decisions for an
13 individual other than decisions about mental health care made after
14 appointment of an agent authorized to make only mental health-care
15 decisions does not revoke the appointment of the agent authorized to make
16 only mental health-care decisions.

17 **Sec. 11.** (UHCDA 11) The following form may be used to create an
18 advance health-care directive:

19 ADVANCE HEALTH-CARE DIRECTIVE

20 HOW YOU CAN USE THIS FORM

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

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

28 YOUR NAME AND DATE OF BIRTH

29 Name:

30 Date of birth:

31 PART A: NAMING AN AGENT

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

3 1. NAMING AN AGENT

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

6 Name:

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

9

10 2. NAMING AN ALTERNATE AGENT

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

13 Name:

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

16

17 3. LIMITING YOUR AGENT'S AUTHORITY

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

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

23 PART B: HEALTH-CARE INSTRUCTIONS

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

26 1. INSTRUCTIONS ABOUT LIFE-SUSTAINING TREATMENT

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

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

1 (....) Always be given to me. (If you mark or initial this choice,
2 you should not mark or initial other choices in this "treatment"
3 section.)

4 (....) Not be given to me if I have a condition that is not curable
5 and is expected to cause my death soon, even if treated.

6 (....) Not be given to me if I am unconscious and I am not expected
7 to be conscious again.

8 (....) Not be given to me if I have a medical condition from which I
9 am not expected to recover that prevents me from communicating with
10 people I care about, caring for myself, and recognizing family and
11 friends.

12 (....) Other (write what you want or do not want):

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

16 (....) Always be given to me. (If you mark or initial this choice,
17 you should not mark or initial other choices in this "food and liquids"
18 section.)

19 (....) Not be given to me if I have a condition that is not curable
20 and is expected to cause me to die soon, even if treated.

21 (....) Not be given to me if I am unconscious and am not expected to
22 be conscious again.

23 (....) Not be given to me if I have a medical condition from which I
24 am not expected to recover that prevents me from communicating with
25 people I care about, caring for myself, and recognizing family and
26 friends.

27 (....) Other (write what you want or do not want):

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

31 (....) Always be given to me. (If you mark or initial this choice,

1 you should not mark or initial other choices in this "pain relief"
2 section.)

3 (....) Never be given to me. (If you mark or initial this choice,
4 you should not mark or initial other choices in this "pain relief"
5 section.)

6 (....) Be given to me if I have a condition that is not curable and
7 is expected to cause me to die soon, even if treated.

8 (....) Be given to me if I am unconscious and am not expected to be
9 conscious again.

10 (....) Be given to me if I have a medical condition from which I am
11 not expected to recover that prevents me from communicating with people I
12 care about, caring for myself, and recognizing family and friends.

13 (....) Other (write what you want or do not want):

14 2. MY PRIORITIES

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

19 You may mark or initial each choice. You also may leave any choice
20 blank.

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

23 (....) Very important

24 (....) Somewhat important

25 (....) Not important

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

28 (....) Very important

29 (....) Somewhat important

30 (....) Not important

31 Being free from significant pain is:

1 (....) Very important

2 (....) Somewhat important

3 (....) Not important

4 Being independent is:

5 (....) Very important

6 (....) Somewhat important

7 (....) Not important

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

10 (....) Very important

11 (....) Somewhat important

12 (....) Not important

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

15 (....) Very important

16 (....) Somewhat important

17 (....) Not important

18 3. OTHER INSTRUCTIONS

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

23

24

25 PART C: OPTIONAL SPECIAL POWERS AND GUIDANCE

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

29 1. OPTIONAL SPECIAL POWERS

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

1 (....) Admit me as a voluntary patient to a facility for mental
2 health treatment for up to days (write in the number of days you
3 want like 7, 14, 30 or another number).

4 (If I do not mark or initial this choice, my Agent MAY NOT admit me
5 as a voluntary patient to this type of facility.)

6 (....) Place me in a nursing home for more than one hundred days
7 even if my needs can be met somewhere else, I am not terminally ill, and
8 I object.

9 (If I do not mark or initial this choice, my Agent MAY NOT do this.)

10 2. ACCESS TO MY HEALTH INFORMATION

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

15 (....) I give my Agent permission to obtain, examine, and share
16 information about my health needs and health care whenever my Agent
17 thinks it will help me.

18 3. FLEXIBILITY FOR MY AGENT

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

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

26 4. NOMINATION OF GUARDIAN

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

31 If a court appoints a guardian to make personal decisions for me, I

1 want the court to choose:

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

4 (....) Other (write who you would want and their contact
5 information):

6 PART D: ORGAN DONATION

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

9 1. DONATION

10 You may mark or initial only one choice.

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

15 (....) I do not want my organs, tissues, or body parts donated to
16 anybody for any reason. (If you mark or initial this choice, you should
17 skip the "purpose of donation" section.)

18 2. PURPOSE OF DONATION

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

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

23 (....) Transplant

24 (....) Therapy

25 (....) Research

26 (....) Education

27 (....) All of the above

28 PART E: SIGNATURES

29 YOUR SIGNATURE

30 Sign your name:

31 Today's date:

1 City/Village and State (optional):

2 SIGNATURE OF A WITNESS

3 You need a witness if you are using this form to name an Agent. The
4 witness must be an adult and cannot be the person you are naming as Agent
5 or the Agent's spouse or someone the Agent lives with as a couple. If you
6 live or are receiving care in a nursing home or an assisted-living
7 facility, the witness cannot be an employee or contractor of the home or
8 facility or someone who owns or runs the home or facility.

9 Name of Witness:

10 Signature of Witness:

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

13 Date witness signed:

14 PART F: INFORMATION FOR AGENTS

15 1. If this form names you as an Agent, you can make decisions about
16 health care for the person who named you when the person cannot make
17 their own.

18 2. If you make a decision for the person, follow any instructions
19 the person gave, including any in this form.

20 3. If you do not know what the person would want, make the decision
21 that you think is in the person's best interest. To figure out what is in
22 the person's best interest, consider the person's values, preferences,
23 and goals if you know them or can learn them. Some of these preferences
24 may be in this form. You should also consider any behavior or
25 communication from the person that indicates what the person currently
26 wants.

27 4. If this form names you as an Agent, you can also get and share
28 the person's health information. But unless the person has said so in
29 this form, you can get or share this information only when the person
30 cannot make decisions about the person's health care.

31 Sec. 12. (UHCD 12) (a) A default surrogate may make a health-care

1 decision for an individual who lacks capacity to make health-care
2 decisions and for whom an agent, or guardian authorized to make health-
3 care decisions, has not been appointed or is not reasonably available.

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

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

12 (2) the individual's spouse, unless:

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

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

18 (C) the individual and the spouse have agreed in a record to a legal
19 separation; or

20 (D) the spouse has abandoned the individual for more than one year;

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

22 (4) the individual's cohabitant;

23 (5) the individual's adult sibling;

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

25 (7) an adult not listed in subdivisions (1) through (6) who has
26 assisted the individual with supported decisionmaking routinely during
27 the preceding six months;

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

31 (9) an adult not listed in subdivisions (1) through (8) who has

1 exhibited special care and concern for the individual and is familiar
2 with the individual's personal values.

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

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

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

15 **Sec. 13.** (UHCDA 13) (a) A default surrogate who assumes authority
16 under section 12 of this act shall inform a responsible health-care
17 professional if two or more members of a class under subsection (b) of
18 section 12 of this act have assumed authority to act as default
19 surrogates and the members do not agree on a health-care decision.

20 (b) A responsible health-care professional shall comply with the
21 decision of a majority of the members of the class with highest priority
22 under subsection (b) of section 12 of this act who have communicated
23 their views to the professional and the professional reasonably believes
24 are acting consistent with their duties under section 17 of this act.

25 (c) If a responsible health-care professional is informed that the
26 members of the class who have communicated their views to the
27 professional are evenly divided concerning the health-care decision, the
28 professional shall make a reasonable effort to solicit the views of
29 members of the class who are reasonably available but have not yet
30 communicated their views to the professional. The professional, after the
31 solicitation, shall comply with the decision of a majority of the members

1 who have communicated their views to the professional and the
2 professional reasonably believes are acting consistent with their duties
3 under section 17 of this act.

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

8 **Sec. 14.** (UHCDA 14) (a) An individual for whom a health-care
9 decision would be made may disqualify another individual from acting as
10 default surrogate for the first individual. The disqualification must be
11 in a record signed by the first individual or communicated verbally or
12 nonverbally to the individual being disqualified, another individual, or
13 a responsible health-care professional. Disqualification under this
14 subsection is effective even if made by an individual who lacks capacity
15 to make an advance directive if the individual clearly communicates a
16 desire that the individual being disqualified not make health-care
17 decisions for the individual.

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

20 (1) a court finds that the potential default surrogate poses a
21 danger to the individual's well-being, even if the court does not issue a
22 protection order against the potential surrogate;

23 (2) the potential default surrogate is an owner, operator, employee,
24 or contractor of a nursing home or an assisted-living facility as defined
25 in section 71-5903 in which the individual is residing or receiving care
26 unless the owner, operator, employee, or contractor is a family member of
27 the individual, the cohabitant of the individual, or a descendant of the
28 cohabitant; or

29 (3) the potential default surrogate refuses to provide a timely
30 declaration under subsection (c) of section 12 of this act.

31 **Sec. 15.** (UHCDA 15) (a) An individual may revoke the appointment of

1 an agent, the designation of a default surrogate, or a health-care
2 instruction in whole or in part, unless:

3 (1) a court finds the individual lacks capacity to do so;

4 (2) the individual is found under subsection (b) of section 4 of
5 this act to lack capacity to do so and, if the individual objects to the
6 finding, the finding is confirmed under subdivision (d)(4) of section 5
7 of this act; or

8 (3) the individual created an advance mental health-care directive
9 that includes the provision under subsection (d) of section 9 of this act
10 and the individual is experiencing the psychiatric or psychological event
11 specified in the directive.

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

16 (c) Except as provided in section 10 of this act, an advance health-
17 care directive of an individual that conflicts with another advance
18 health-care directive of the individual revokes the earlier directive to
19 the extent of the conflict.

20 (d) Unless otherwise provided in an individual's advance health-care
21 directive appointing an agent, the appointment of a spouse of an
22 individual as agent for the individual is revoked if:

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

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

28 (3) the individual and the spouse have agreed in a record to a legal
29 separation; or

30 (4) the spouse has abandoned the individual for more than one year.

31 **Sec. 16.** (UHCDA 16) (a) An advance health-care directive created

1 outside this state is valid if it complies with:

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

5 (2) the Nebraska Uniform Health-Care Decisions Act.

6 (b) A person may assume without inquiry that an advance health-care
7 directive is genuine, valid, and still in effect, and may implement and
8 rely on it, unless the person has good cause to believe the directive is
9 invalid or has been revoked.

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

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

17 (e) The Nebraska Uniform Health-Care Decisions Act does not affect
18 the validity of an electronic record or signature that is valid under the
19 Uniform Electronic Transactions Act.

20 (f) If the Nebraska Uniform Health-Care Decisions Act conflicts with
21 other law of this state relating to the creation, execution,
22 implementation, or revocation of an advance health-care directive, the
23 Nebraska Uniform Health-Care Decisions Act prevails.

24 **Sec. 17. (UHCDA 17)** (a) An agent or default surrogate has a
25 fiduciary duty to the individual for whom the agent or default surrogate
26 is acting when exercising or purporting to exercise a power under section
27 18 of this act.

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

1 surrogate.

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

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

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

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

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

16 (e) As soon as reasonably feasible, an agent or default surrogate
17 who is informed of a revocation of an advance health-care directive or
18 disqualification of the agent or default surrogate shall communicate the
19 revocation or disqualification to a responsible health-care professional.

20 **Sec. 18.** (UHCDA 18) (a) Except as provided in subsection (c) of
21 this section, the power of an agent or default surrogate commences when
22 the individual is found under subsection (b) of section 4 of this act or
23 by a court to lack capacity to make a health-care decision. The power
24 ceases if the individual later is found to have capacity to make a
25 health-care decision, or the individual objects under subsection (c) of
26 section 5 of this act to the finding of lack of capacity under subsection
27 (b) of section 4 of this act. The power resumes if:

28 (1) the power ceased because the individual objected under
29 subsection (c) of section 5 of this act; and

30 (2) the finding of lack of capacity is confirmed under subdivision
31 (d)(4) of section 5 of this act or a court finds that the individual

1 lacks capacity to make a health-care decision.

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

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

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

15 (e) An agent or default surrogate may not consent to voluntary
16 admission of the individual to a facility for mental health treatment
17 unless:

18 (1) voluntary admission is specifically authorized by the individual
19 in an advance health-care directive in a record; and

20 (2) the admission is for no more than the maximum of the number of
21 days specified in the directive or five calendar days, whichever is less.

22 (f) Except as provided in subsection (g) of this section, an agent
23 or default surrogate may not consent to placement of the individual in a
24 nursing home if the placement is intended to be for more than one hundred
25 days if:

26 (1) an alternative living arrangement is reasonably feasible;

27 (2) the individual objects to the placement; or

28 (3) the individual is not terminally ill.

29 (g) If specifically authorized by the individual in an advance
30 health-care directive in a record, an agent or default surrogate may
31 consent to placement of the individual in a nursing home for more than

1 one hundred days even if:

2 (1) an alternative living arrangement is reasonably feasible;

3 (2) the individual objects to the placement; and

4 (3) the individual is not terminally ill.

5 **Sec. 19.** (UHCDA 19) (a) If an individual has a long-term disability
6 requiring routine treatment by artificial nutrition, hydration, or
7 mechanical ventilation and a history of using the treatment without
8 objection, an agent or default surrogate may not consent to withhold or
9 withdraw the treatment unless:

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

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

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

17 (A) given a direction inconsistent with withholding or withdrawal;
18 or

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

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

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

24 (2) may be made by a guardian only if the court appointing the
25 guardian specifically authorizes the guardian to make the decision.

26 **Sec. 20.** (UHCDA 20) (a) An individual in a power of attorney for
27 health care may appoint multiple individuals as co-agents. Unless the
28 power of attorney provides otherwise, each co-agent may exercise
29 independent authority.

30 (b) An individual in a power of attorney for health care may appoint
31 one or more individuals to act as alternate agents if a predecessor agent

1 resigns, dies, becomes disqualified, is not reasonably available, or
2 otherwise is unwilling or unable to act as agent.

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

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

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

10 **Sec. 21.** (UHCD 21) (a) A responsible health-care professional who
11 is aware that an individual has been found to lack capacity to make a
12 decision shall make a reasonable effort to determine if the individual
13 has a surrogate.

14 (b) If possible before implementing a health-care decision made by a
15 surrogate, a responsible health-care professional as soon as reasonably
16 feasible shall communicate to the individual the decision made and the
17 identity of the surrogate.

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

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

25 (2) if possible, communicate to the individual and the individual's
26 surrogate the finding or circumstance and that the individual may object
27 under subsection (c) of section 5 of this act to the finding under
28 subsection (b) of section 4 of this act.

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

1 disqualified, shall:

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

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

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

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

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

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

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

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

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

28 (3) compliance with the instruction or decision would:

29 (A) require the professional to provide care that is contrary to the
30 professional's religious belief or moral conviction if other law permits
31 the professional to refuse to provide care for that reason;

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

4 (C) violate a court order or other law.

5 (g) A health-care professional or health-care institution that
6 refuses to provide care under subsection (f) of this section shall:

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

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

12 (3) either:

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

17 (B) if care is refused under subdivision (f)(3) of this section,
18 provide life-sustaining care and care needed to keep or make the
19 individual comfortable, consistent with accepted medical standards, until
20 a transfer is made or, if the professional or institution reasonably
21 believes that a transfer cannot be made, for at least ten days after the
22 refusal.

23 **Sec. 22.** (UHCDA 22) (a) A guardian may refuse to comply with or
24 revoke the individual's advance health-care directive only if the court
25 appointing the guardian expressly orders the noncompliance or revocation.

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

29 **Sec. 23.** (UHCDA 23) (a) A health-care professional or health-care
30 institution acting in good faith is not subject to civil or criminal
31 liability or to discipline for unprofessional conduct for:

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

5 (2) refusing to comply with a health-care decision made for an
6 individual by another person if the refusal is based on a reasonable
7 belief that the person lacked authority or capacity to make the decision;

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

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

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

17 (6) complying with an individual's direction under subsection (d) of
18 section 9 of this act.

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

24 **Sec. 24. (UHCDA 24) (a) A person may not:**

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

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

30 (A) intentionally conceal, deface, obliterate, or delete the
31 directive or a revocation of the directive without consent of the

1 individual who created or revoked the directive; or

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

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

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

11 (b) An individual who is the subject of conduct prohibited under
12 subsection (a) of this section, or the individual's estate, has a cause
13 of action against a person that violates subsection (a) of this section
14 for statutory damages of twenty-five thousand dollars or actual damages
15 resulting from the violation, whichever is greater.

16 (c) Subject to subsection (d) of this section, an individual who
17 makes a health-care instruction, or the individual's estate, has a cause
18 of action against a health-care professional or health-care institution
19 that intentionally violates section 21 of this act for statutory damages
20 of fifty thousand dollars or actual damages resulting from the violation,
21 whichever is greater.

22 (d) A health-care professional who is an emergency medical responder
23 is not liable under subsection (c) of this section for a violation of
24 subsection (e) of section 21 of this act if:

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

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

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

1 institution in which the individual resides or was receiving care.

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

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

7 **Sec. 25.** (UHCDA 25) (a) A physical or electronic copy of an advance
8 health-care directive, revocation of an advance health-care directive, or
9 appointment, designation, or disqualification of a surrogate has the same
10 effect as the original.

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

16 **Sec. 26.** (UHCDA 26) (a) On petition of an individual, the
17 individual's surrogate, a health-care professional or health-care
18 institution providing health care to the individual, or a person
19 interested in the welfare of the individual, the court may:

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

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

26 (A) is disqualified under subsection (b) of section 8 of this act;

27 (B) is unwilling or unable to comply with section 17 of this act; or

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

29 (3) enjoin another individual from acting as a default surrogate, on
30 a finding that the other individual acting as a default surrogate did not
31 comply with section 12 of this act or the other individual:

1 (A) is disqualified under section 14 of this act;
2 (B) is unwilling or unable to comply with section 17 of this act; or
3 (C) poses a danger to the first individual's well-being; or
4 (4) order implementation of a health-care decision made:

5 (A) by and for the individual; or
6 (B) by an agent or default surrogate who is acting in compliance
7 with the powers and duties of the agent or default surrogate.

8 (b) In the Nebraska Uniform Health-Care Decisions Act, advocacy for
9 the withholding or withdrawal of health care or mental health care from
10 an individual is not itself evidence that an agent or default surrogate,
11 or a potential agent or default surrogate, poses a danger to the
12 individual's well-being.

13 (c) The court shall expedite a proceeding under this section and
14 grant or deny the petition within ten business days after the petition is
15 filed.

16 **Sec. 27.** (UHCD 27) (a) The Nebraska Uniform Health-Care Decisions
17 Act does not authorize mercy killing, assisted suicide, or euthanasia.

18 (b) The Nebraska Uniform Health-Care Decisions Act does not affect
19 other law of this state governing treatment for mental illness of an
20 individual involuntarily committed for treatment under the Nebraska
21 Mental Health Commitment Act or the Sex Offender Commitment Act.

22 (c) Death of an individual caused by withholding or withdrawing
23 health care in accordance with the Nebraska Uniform Health-Care Decisions
24 Act does not constitute a suicide or homicide or legally impair or
25 invalidate a policy of insurance or an annuity providing a death benefit,
26 notwithstanding any term of the policy or annuity.

27 (d) The Nebraska Uniform Health-Care Decisions Act does not create a
28 presumption concerning the intention of an individual who has not created
29 an advance health-care directive.

30 (e) An advance health-care directive created before, on, or after
31 the operative date of this section must be interpreted in accordance with

1 other law of this state, excluding the state's choice-of-law rules, at
2 the time the directive is implemented.

3 **Sec. 28.** (UHCDA 28) In applying and construing the Nebraska Uniform
4 Health-Care Decisions Act, a court shall consider the promotion of
5 uniformity of the law among jurisdictions that enact it.

6 **Sec. 29.** (UHCDA 29) (a) An advance health-care directive created
7 before the operative date of this section is valid if it complies with
8 the Nebraska Uniform Health-Care Decisions Act or complied at the time of
9 creation with the law of the state in which it was created.

10 (b) The Nebraska Uniform Health-Care Decisions Act does not affect
11 the validity or effect of an act done before the operative date of this
12 section.

13 (c) An individual who assumed authority to act as default surrogate
14 before the operative date of this section may continue to act as default
15 surrogate until the individual for whom the default surrogate is acting
16 has capacity or the default surrogate is disqualified, whichever occurs
17 first.

18 **Sec. 30.** (UHCDA 30) The Nebraska Uniform Health-Care Decisions Act
19 applies to an advance health-care directive created before, on, or after
20 the operative date of this section.

21 **Sec. 31.** Section 24-517, Revised Statutes Cumulative Supplement,
22 2024, is amended to read:

23 24-517 Each county court shall have the following jurisdiction:

24 (1) Exclusive original jurisdiction of all matters relating to
25 decedents' estates, including the probate of wills and the construction
26 thereof, except as provided in subsection (c) of section 30-2464 and
27 section 30-2486;

28 (2) Exclusive original jurisdiction in all matters relating to the
29 guardianship of a person, except if a separate juvenile court already has
30 jurisdiction over a child in need of a guardian, concurrent original
31 jurisdiction with the separate juvenile court in such guardianship;

1 (3) Exclusive original jurisdiction of all matters relating to
2 conservatorship of any person, including (a) original jurisdiction to
3 consent to and authorize a voluntary selection, partition, and setoff of
4 a ward's interest in real estate owned in common with others and to
5 exercise any right of the ward in connection therewith which the ward
6 could exercise if competent and (b) original jurisdiction to license the
7 sale of such real estate for cash or on such terms of credit as shall
8 seem best calculated to produce the highest price subject only to the
9 requirements set forth in section 30-3201;

10 (4) Concurrent jurisdiction with the district court to involuntarily
11 partition a ward's interest in real estate owned in common with others;

12 (5) Concurrent original jurisdiction with the district court in all
13 civil actions of any type when the amount in controversy is forty-five
14 thousand dollars or less through June 30, 2005, and as set by the Supreme
15 Court pursuant to subdivision (b) of this subdivision on and after July
16 1, 2005.

17 (a) When the pleadings or discovery proceedings in a civil action
18 indicate that the amount in controversy is greater than the
19 jurisdictional amount of subdivision (5) of this section, the county
20 court shall, upon the request of any party, certify the proceedings to
21 the district court as provided in section 25-2706. An award of the county
22 court which is greater than the jurisdictional amount of subdivision (5)
23 of this section is not void or unenforceable because it is greater than
24 such amount, however, if an award of the county court is greater than the
25 jurisdictional amount, the county court shall tax as additional costs the
26 difference between the filing fee in district court and the filing fee in
27 county court.

28 (b) The Supreme Court shall adjust the jurisdictional amount for the
29 county court every fifth year commencing July 1, 2005. The adjusted
30 jurisdictional amount shall be equal to the then current jurisdictional
31 amount adjusted by the average percentage change in the unadjusted

1 Consumer Price Index for All Urban Consumers published by the Federal
2 Bureau of Labor Statistics for the five-year period preceding the
3 adjustment date. The jurisdictional amount shall be rounded to the
4 nearest one-thousand-dollar amount;

5 (6) Concurrent original jurisdiction with the district court in any
6 criminal matter classified as a misdemeanor or for any infraction. The
7 district court shall have concurrent original jurisdiction in any
8 criminal matter classified as a misdemeanor that arises from the same
9 incident as a charged felony;

10 (7) Concurrent original jurisdiction with the district court in
11 domestic relations matters as defined in section 25-2740 and with the
12 district court and separate juvenile court in paternity or custody
13 determinations as provided in section 25-2740;

14 (8) Concurrent original jurisdiction with the district court in
15 matters arising under the Nebraska Uniform Trust Code;

16 (9) Exclusive original jurisdiction in any action based on violation
17 of a city or village ordinance, except with respect to violations
18 committed by persons under eighteen years of age;

19 (10) The jurisdiction of a juvenile court as provided in the
20 Nebraska Juvenile Code when sitting as a juvenile court in counties which
21 have not established separate juvenile courts;

22 (11) Exclusive original jurisdiction in matters of adoption, except
23 if a separate juvenile court already has jurisdiction over the child to
24 be adopted, concurrent original jurisdiction with the separate juvenile
25 court;

26 (12) Exclusive original jurisdiction in matters arising under the
27 Nebraska Uniform Custodial Trust Act;

28 (13) Concurrent original jurisdiction with the district court in any
29 matter relating to a power of attorney and the action or inaction of any
30 agent acting under a power of attorney;

31 (14) Exclusive original jurisdiction in any action arising under

1 sections 30-3401 to 30-3432;

2 (15) Concurrent original jurisdiction with the district court in any
3 action arising under the Nebraska Uniform Health-Care Decisions Act;

4 (16) ~~(15)~~ Exclusive original jurisdiction in matters arising under
5 the Nebraska Uniform Transfers to Minors Act;

6 (17) ~~(16)~~ Concurrent original jurisdiction with the district court
7 in matters arising under the Uniform Principal and Income Act;

8 (18) ~~(17)~~ Concurrent original jurisdiction with the district court
9 in matters arising under the Uniform Testamentary Additions to Trusts Act
10 (1991) except as otherwise provided in subdivision (1) of this section;

11 (19) ~~(18)~~ Concurrent original jurisdiction with the district court
12 to determine contribution rights under section 68-919;

13 (20) ~~(19)~~ Concurrent original jurisdiction with the district court
14 in matters arising under the Uniform Community Property Disposition at
15 Death Act except for all matters relating to decedents' estates for which
16 the county court has exclusive original jurisdiction under subdivision
17 (1) of this section; and

18 (21) ~~(20)~~ All other jurisdiction heretofore provided and not
19 specifically repealed by Laws 1972, Legislative Bill 1032, and such other
20 jurisdiction as hereafter provided by law.

21 **Sec. 32.** Section 25-2728, Revised Statutes Cumulative Supplement,
22 2024, is amended to read:

23 25-2728 (1) Any party in a civil case and any defendant in a
24 criminal case may appeal from the final judgment or final order of the
25 county court to the district court of the county where the county court
26 is located. In a criminal case, a prosecuting attorney may obtain review
27 by exception proceedings pursuant to sections 29-2317 to 29-2319.

28 (2) Sections 25-2728 to 25-2738 shall not apply to:

29 (a) Appeals in eminent domain proceedings as provided in sections
30 76-715 to 76-723;

31 (b) Appeals in proceedings in the county court sitting as a juvenile

1 court as provided in sections 43-2,106 and 43-2,106.01;

2 (c) Appeals in matters arising under the Nebraska Probate Code as
3 provided in section 30-1601;

4 (d) Appeals in matters arising under the Nebraska Uniform Trust
5 Code;

6 (e) Appeals in matters arising under the Health Care Surrogacy Act
7 or the Nebraska Uniform Health-Care Decisions Act as provided in section
8 30-1601;

9 (f) Appeals in adoption proceedings as provided in section 43-112;

10 (g) Appeals in inheritance tax proceedings as provided in section
11 77-2023; and

12 (h) Appeals in domestic relations matters as provided in section
13 25-2739.

14 **Sec. 33.** Section 30-1601, Revised Statutes Cumulative Supplement,
15 2024, is amended to read:

16 30-1601 (1) In all matters arising under the Nebraska Probate Code
17 and ~~and~~ in all matters in county court arising under the Nebraska Uniform
18 Trust Code, ~~and in all matters in county court arising under the Health~~
19 Care Surrogacy Act, or the Nebraska Uniform Health-Care Decisions Act,
20 appeals may be taken to the Court of Appeals in the same manner as an
21 appeal from district court to the Court of Appeals.

22 (2) An appeal may be taken by any party and may also be taken by any
23 person against whom the final judgment or final order may be made or who
24 may be affected thereby.

25 (3) When the appeal is by someone other than a personal
26 representative, conservator, trustee, guardian, guardian ad litem, ~~or~~
27 surrogate pursuant to the Health Care Surrogacy Act, or person acting
28 pursuant to the Nebraska Uniform Health-Care Decisions Act, the appealing
29 party shall, within thirty days after the entry of the judgment or final
30 order complained of, deposit with the clerk of the county court a
31 supersedeas bond or undertaking in such sum as the court shall direct,

1 with at least one good and sufficient surety approved by the court,
2 conditioned that the appellant will satisfy any judgment and costs that
3 may be adjudged against him or her, including costs under subsection (6)
4 of this section, unless the court directs that no bond or undertaking
5 need be deposited. If an appellant fails to comply with this subsection,
6 the Court of Appeals on motion and notice may take such action, including
7 dismissal of the appeal, as is just.

8 (4) The appeal shall be a supersedeas for the matter from which the
9 appeal is specifically taken, but not for any other matter. In appeals
10 pursuant to sections 30-2601 to 30-2661, upon motion of any party to the
11 action, the county court may remove the supersedeas or require the
12 appealing party to deposit with the clerk of the county court a bond or
13 other security approved by the court in an amount and conditioned in
14 accordance with sections 30-2640 and 30-2641. Once the appeal is
15 perfected, the court having jurisdiction over the appeal may, upon motion
16 of any party to the action, reimpose or remove the supersedeas or require
17 the appealing party to deposit with the clerk of the court a bond or
18 other security approved by the court in an amount and conditioned in
19 accordance with sections 30-2640 and 30-2641. Upon motion of any
20 interested person or upon the court's own motion, the county court may
21 appoint a special guardian or conservator pending appeal despite any
22 supersedeas order.

23 (5) The judgment of the Court of Appeals shall not vacate the
24 judgment in the county court. The judgment of the Court of Appeals shall
25 be certified without cost to the county court for further proceedings
26 consistent with the determination of the Court of Appeals.

27 (6) If it appears to the Court of Appeals that an appeal was taken
28 vexatiously or for delay, the court shall adjudge that the appellant
29 shall pay the cost thereof, including an attorney's fee, to the adverse
30 party in an amount fixed by the Court of Appeals, and any bond required
31 under subsection (3) of this section shall be liable for the costs. In a

1 proceeding under sections 30-701 to 30-713, the Court of Appeals may also
2 order remedies under section 30-705.

3 **Sec. 34.** Section 30-2628, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 30-2628 (a) Except as limited by section 30-2620, a guardian of an
6 incapacitated person has the same powers, rights, and duties respecting
7 the guardian's ward that a parent has respecting the parent's
8 unemancipated minor child, except that a guardian is not liable to third
9 persons for acts of the ward solely by reason of the parental
10 relationship. In particular, and without qualifying the foregoing, a
11 guardian has the following powers and duties, except as may be specified
12 by order of the court:

13 (1) To the extent that it is consistent with the terms of any order
14 by a court of competent jurisdiction relating to detention or commitment
15 of the ward, a guardian is entitled to custody of the person of his or
16 her ward and may establish the ward's place of abode within this state
17 or, with court permission, outside of this state. When establishing the
18 ward's place of abode, a guardian shall make every reasonable effort to
19 ensure that the placement is the least restrictive alternative. A
20 guardian shall authorize a placement to a more restrictive environment
21 only after careful evaluation of the need for such placement. The
22 guardian may obtain a professional evaluation or assessment that such
23 placement is in the best interest of the ward.

24 (2) If entitled to custody of his or her ward, a guardian shall make
25 provision for the care, comfort, and maintenance of his or her ward and,
26 whenever appropriate, arrange for the ward's training and education.
27 Without regard to custodial rights of the ward's person, a guardian shall
28 take reasonable care of his or her ward's clothing, furniture, vehicles,
29 and other personal effects and commence protective proceedings if other
30 property of his or her ward is in need of protection.

31 (3) A guardian may give any consents or approvals that may be

1 necessary to enable the ward to receive medical, psychiatric,
2 psychological, or other professional care, counsel, treatment, or
3 service. When making such medical or psychiatric decisions, the guardian
4 shall consider and carry out the intent of the ward expressed prior to
5 incompetency to the extent allowable by law. Notwithstanding this
6 provision or any other provision of the Nebraska Probate Code, the ward
7 may authorize the release of financial, medical, and other confidential
8 records pursuant to sections 20-161 to 20-166.

9 (4) If no conservator for the estate of the ward has been appointed,
10 a guardian shall, within thirty days after appointment, prepare and file
11 with the appointing court a complete inventory of the ward's estate
12 together with the guardian's oath or affirmation that the inventory is
13 complete and accurate so far as the guardian is informed. The guardian
14 shall mail a copy thereof by first-class mail to the ward, if the ward
15 can be located and has attained the age of fourteen years, and to all
16 other interested persons as defined in section 30-2601. The guardian
17 shall file with the court a certificate of mailing showing that copies
18 were sent to all interested persons by first-class mail along with a form
19 to send back to the court that indicates if such person wants to continue
20 receiving notifications about the proceedings. The guardian shall keep
21 suitable records of the guardian's administration and exhibit the same on
22 request of any interested person. To the extent a guardian, who has not
23 been named a conservator, has possession or control of the ward's estate,
24 the guardian shall file with the court an updated inventory every year
25 along with a certificate of mailing showing that copies were sent to all
26 interested persons and, if a bond has been required, to the bonding
27 company by first-class mail.

28 (5) If no conservator for the estate of the ward has been appointed,
29 a guardian may:

30 (i) Institute proceedings to compel any person under a duty to
31 support the ward or to pay sums for the welfare of the ward to perform

1 such person's duty;

2 (ii) Receive money and tangible property deliverable to the ward and
3 apply the money and property for support, care, and education of the
4 ward; but a guardian may not use funds from his or her ward's estate for
5 room and board which the guardian or the guardian's spouse, parent, or
6 child has furnished the ward unless a charge for the service is approved
7 by order of the court made upon notice to at least one of the next of kin
8 of the ward, if notice is possible. A guardian must exercise care to
9 conserve any excess for the ward's needs; and

10 (iii) Exercise a settlor's powers with respect to revocation,
11 amendment, or distribution of trust property when authorized by a court
12 acting under the authority of subsection (f) of section 30-3854. In
13 acting under the authority of subsection (f) of section 30-3854, the
14 court shall proceed in the same manner as provided under subdivision (3)
15 of section 30-2637.

16 (6) A guardian is required to report the condition of his or her
17 ward and of the estate which has been subject to the guardian's
18 possession or control, at least every year and as required by the court
19 or court rule. The court shall receive from any interested person, for a
20 period of thirty days after the filing of the guardian's report, any
21 comments with regard to the need for continued guardianship or amendment
22 of the guardianship order. If the court has reason to believe that
23 additional rights should be returned to the ward or assigned to the
24 guardian, the court shall set a date for a hearing and may provide all
25 protections as set forth for the original finding of incapacity and
26 appointment of a guardian.

27 (7) If a conservator has been appointed, all of the ward's estate
28 received by the guardian in excess of those funds expended to meet
29 current expenses for support, care, and education of the ward must be
30 paid to the conservator for management as provided in the Nebraska
31 Probate Code, and the guardian must account to the conservator for funds

1 expended.

2 (b) Any guardian of one for whom a conservator also has been
3 appointed shall control the custody and care of the ward and is entitled
4 to receive reasonable sums for the guardian's services and for room and
5 board furnished to the ward as agreed upon between the guardian and the
6 conservator if the amounts agreed upon are reasonable under the
7 circumstances. The guardian may request the conservator to expend the
8 ward's estate by payment to third persons or institutions for the ward's
9 care and maintenance.

10 (c) Nothing in subdivision (a)(3) of this section or in any other
11 part of this section shall be construed to alter the decisionmaking
12 authority of:

13 (1) An attorney in fact designated and authorized under sections
14 30-3401 to 30-3432 to make health care decisions pursuant to a power of
15 attorney for health care; or -

16 (2) Any person authorized under the Nebraska Uniform Health-Care
17 Decisions Act to make health-care decisions or take other actions
18 pursuant to such act.

19 **Sec. 35.** Section 71-4843, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 71-4843 (a) For purposes of this section:

22 (1) Advance health care directive means a power of attorney for
23 health care or a record signed or authorized by a prospective donor
24 containing the prospective donor's direction concerning a health care
25 decision for the prospective donor;

26 (2) Declaration means a record signed by a prospective donor
27 specifying the circumstances under which life-sustaining treatment may be
28 withheld or withdrawn from the prospective donor; and

29 (3) Health care decision means any decision regarding the health
30 care of the prospective donor.

31 (b) If a prospective donor has a declaration or advance health care

1 directive and the terms of the declaration or directive and the express
2 or implied terms of a potential anatomical gift are in conflict with
3 regard to the administration of measures necessary to ensure the medical
4 suitability of a part for transplantation or therapy, the prospective
5 donor's attending physician and prospective donor shall confer to resolve
6 the conflict. If the prospective donor is incapable of resolving the
7 conflict, an agent acting under the prospective donor's declaration or
8 directive, or, if none or the agent is not reasonably available, a
9 surrogate acting under the Health Care Surrogacy Act, a person authorized
10 under the Nebraska Uniform Health-Care Decisions Act, or another person
11 authorized by law other than the Revised Uniform Anatomical Gift Act to
12 make health care decisions on behalf of the prospective donor, shall act
13 for the donor to resolve the conflict. The conflict must be resolved as
14 expeditiously as possible. Information relevant to the resolution of the
15 conflict may be obtained from the appropriate procurement organization
16 and any other person authorized to make an anatomical gift for the
17 prospective donor under section 71-4832. Before resolution of the
18 conflict, measures necessary to ensure the medical suitability of the
19 part from a prospective donor may not be administered if it is determined
20 that the administration of those measures would not provide the
21 prospective donor with appropriate end-of-life care or it can be
22 anticipated by reasonable medical judgment that such measures would cause
23 the prospective donor's death other than by the prospective donor's
24 underlying pathology. If the conflict is not resolved expeditiously, the
25 direction of the declaration or advanced directive controls.

26 **Sec. 36.** Section 71-9407, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 71-9407 The Assisting Caregiver Transitions Act does not:

29 (1) Create a private right of action against a hospital, a hospital
30 employee, or a person with whom the hospital has a contractual
31 relationship;

1 (2) Create additional civil or regulatory liability for a hospital,
2 a hospital employee, or a person with whom the hospital has a contractual
3 relationship;

4 (3) Supersede or replace existing rights or remedies under any other
5 law;

6 (4) Affect a license issued to a hospital pursuant to the Health
7 Care Facility Licensure Act;

8 (5) Establish a new requirement to reimburse or otherwise pay for
9 services rendered by a caregiver for aftercare; or

10 (6) Interfere with an individual acting under a valid power of
11 attorney for health care as defined in section 30-3402 or section 2 of
12 this act or acting as a conservator as defined in section 30-2209.

13 **Sec. 37.** Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
14 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 40 of
15 this act become operative on January 1, 2028. The other sections of this
16 act become operative on their effective date.

17 **Sec. 38.** If any section in this act or any part of any section is
18 declared invalid or unconstitutional, the declaration shall not affect
19 the validity or constitutionality of the remaining portions.

20 **Sec. 39.** Original sections 30-2628, 71-4843, and 71-9407, Reissue
21 Revised Statutes of Nebraska, and sections 24-517, 25-2728, and 30-1601,
22 Revised Statutes Cumulative Supplement, 2024, are repealed.

23 **Sec. 40.** The following sections are outright repealed: Sections
24 30-3401, 30-3403, 30-3404, 30-3407, 30-3409, 30-3410, 30-3411, 30-3412,
25 30-3413, 30-3414, 30-3415, 30-3416, 30-3417, 30-3418, 30-3419, 30-3420,
26 30-3421, 30-3422, 30-3424, 30-3425, 30-3426, 30-3427, 30-3428, 30-3429,
27 30-3430, 30-3431, and 30-3432, Reissue Revised Statutes of Nebraska, and
28 sections 30-601, 30-602, 30-603, 30-604, 30-605, 30-606, 30-607, 30-608,
29 30-609, 30-610, 30-611, 30-612, 30-613, 30-614, 30-615, 30-616, 30-617,
30 30-618, 30-619, 30-3402, 30-3405, 30-3406, 30-3408, 30-3423, 30-4401,
31 30-4402, 30-4403, 30-4404, 30-4405, 30-4406, 30-4407, 30-4408, 30-4409,

- 1 30-4410, 30-4411, 30-4412, 30-4413, 30-4414, and 30-4415, Revised
- 2 Statutes Cumulative Supplement, 2024.