

§5-802. Advance health-care directives

(a) An adult or emancipated minor with capacity may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises. An oral instruction is valid only if made to a health-care provider or to an individual who may serve as a surrogate under section 5-805, subsection (b). [1995, c. 378, Pt. A, §1 (new).]

(b) An adult or emancipated minor with capacity may execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity. The power must be in writing and signed by the principal and 2 witnesses. Notwithstanding any law validating electronic or digital signatures, signatures of the principal and witnesses must be made in person and not by electronic means. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. Unless related to the principal by blood, marriage or adoption, an agent may not be an owner, operator or employee of a residential long-term health-care institution at which the principal is receiving care. [1999, c. 711, §2 (amd).]

(c) Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity. [1995, c. 378, Pt. A, §1 (new).]

(d) Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity or that another condition exists that affects an individual instruction, the authority of an agent or the validity of an advance health-care directive must be made by the primary physician, by a court of competent jurisdiction or, for an individual who has included a directive authorizing mental health treatment in an advance health-care directive, by a person qualified to conduct an examination pursuant to Title 34-B, section 3863. [1999, c. 423, §1 (amd).]

(e) An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent. [1995, c. 378, Pt. A, §1 (new).]

(f) A health-care decision made by an agent for a principal is effective without judicial approval. [1995, c. 378, Pt. A, §1 (new).]

(g) A written advance health-care directive may include the individual's nomination of a guardian of the person. [1995, c. 378, Pt. A, §1 (new).]

(h) An advance health-care directive is valid for purposes of this Part if it complies with this Part, regardless of when or where executed or communicated, or if valid under the laws of the state in which it was executed. An advance health-care directive that is valid where executed or communicated is valid for the purposes of this Part. [2005, c. 284, §4 (amd).]

(i) An advance health care directive is valid for purposes of directing mental health treatment. The terms of the directive must be construed in accordance with this Part and Title 34-B, sections 3831 and 3862. [1999, c. 423, §2 (new).] [emphasis added]

(j) A surrogate or an agent named in an advance health-care directive has the power and authority to serve as the personal representative of the patient who executed the health care directive for all purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq. and its regulations, 45 Code of Federal Regulations 160-164. The surrogate or agent has all the rights of the patient with respect to the use and disclosure of the individually identifiable health information and other medical records of the patient. [2003, c. 618, Pt. C, §2 (new).]

Section History:

PL 1995,	Ch. 378,	§A1 (NEW).
PL 1999,	Ch. 423,	§1,2 (AMD).
PL 1999,	Ch. 711,	§2 (AMD).
PL 2003,	Ch. 618,	§C2 (AMD).
PL 2005,	Ch. 284,	§4 (AMD).

Article V: Protection of Persons under Disability and Their Property

Part 8: UNIFORM HEALTH-CARE DECISIONS ACT (HEADING: PL 1995, c. 378, Pt. A, @1 (new))

§5-803. Revocation of advance health-care directive

(a) An individual with capacity may revoke the designation of an agent only by a signed writing or by personally informing the supervising health-care provider. [1995, c. 378, Pt. A, §1 (new).]

(b) An individual with capacity may revoke all or part of an advance health-care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke. [1995, c. 378, Pt. A, §1 (new).]

(c) A health-care provider, agent, guardian or surrogate who is informed of a revocation by an individual with capacity shall promptly communicate the fact of the revocation to the supervising health-care provider and to any health-care institution at which the patient is receiving care. [1995, c. 378, Pt. A, §1 (new).]

(d) A decree of annulment, divorce, dissolution of marriage or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care. [1995, c. 378, Pt. A, §1 (new).]

(e) An advance health-care directive that conflicts with an earlier advance health-care directive revokes the earlier directive to the extent of the conflict. [1995, c. 378, Pt. A, §1 (new).]

Section History:

PL 1995, Ch. 378, §A1 (NEW).

§5-804. Optional form

The following form may, but need not, be used to create an advance health-care directive. The other sections of this Part govern the effect of this or any other writing used to create an advance health-care directive. An individual with capacity may complete or modify all or any part of the following form.

ADVANCE HEALTH-CARE DIRECTIVE

Explanation

[1995, c. 378, Pt. A, §1 (new).]

REVISOR'S NOTE: The first 2 lines of the form will go with the first indented paragraph for purposes of history and amendment.

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding donation of organs and the designation of your primary physician. If you use this form, you may complete or modify all or any part of it. You are free to use a different form. [1995, c. 378, Pt. A, §1 (new).]

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator or employee of a residential long-term health-care institution at which you are receiving care. [1995, c. 378, Pt. A, §1 (new).]

Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for

all health-care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to: [1995, c. 378, Pt. A, §1 (new).]

(a) Consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition; [1995, c. 378, Pt. A, §1 (new).]

(b) Select or discharge health-care providers and institutions; [1995, c. 378, Pt. A, §1 (new).]

(c) Approve or disapprove diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and [1995, c. 378, Pt. A, §1 (new).]

(d) Direct the provision, withholding or withdrawal of artificial nutrition and hydration and all other forms of health care, including life-sustaining treatment. [1995, c. 378, Pt. A, §1 (new).]

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional wishes. [1995, c. 378, Pt. A, §1 (new).]

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death. [1995, c. 378, Pt. A, §1 (new).]

Part 4 of this form lets you designate a physician to have primary responsibility for your health care. [1995, c. 378, Pt. A, §1 (new).]

After completing this form, sign and date the form at the end. You must have 2 other individuals sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that he or she understands your wishes and is willing to take the responsibility. [1995, c. 378, Pt. A, §1 (new).]

You have the right to revoke this advance health-care directive or replace this form at any time. [1995, c. 378, Pt. A, §1 (new).]

REVISOR'S NOTE: Each Part in this form carries its own history.

PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

.....

(name of individual you choose as agent)

.....

(address) (city) (state) (zip code)

.....

(home phone) (work phone)

OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able or reasonably available to make a health-care decision for me, I designate as my first alternate agent:

.....

(name of individual you choose as first alternate agent)

.....

(address) (city) (state) (zip code)

.....

(home phone) (work phone)

OPTIONAL: If I revoke the authority of my agent and first alternate agent or if neither is willing, able or reasonably available to make a health-care decision for me, I designate as my second alternate agent:

.....

(name of individual you choose as second alternate agent)

.....

(address) (city) (state) (zip code)

.....

(home phone) (work phone)

(2) AGENT'S AUTHORITY: My agent is authorized to make all health-care decisions for me, including decisions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care to keep me alive, except as I state here:

.....

.....

.....

(Add additional sheets if needed.)

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines that I am unable to make my own health-care decisions unless I mark the following box. If I mark this box [], my agent's authority to make health-care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION: My agent shall make health-care decisions for me in accordance with this power of attorney for health care, any instructions I give in Part 2 of this form and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health-care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated. [2003, c. 688, Pt. M, §1 (amd); §2 (aff).]

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making end-of-life decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(6) END-OF-LIFE DECISIONS: I direct that my health-care providers and others involved in my care provide, withhold or withdraw treatment in accordance with the choice I have marked below:

(a) Choice Not To Prolong Life

I do not want my life to be prolonged if (i) I have an incurable and irreversible condition that will result in my death within a relatively short time, (ii) I become unconscious and, to a reasonable degree of medical certainty, I will not regain consciousness, or (iii) the likely risks and burdens of treatment would outweigh the expected benefits, OR

(b) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health-care standards.

(7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided, withheld or withdrawn in accordance with the choice I have made in paragraph (6) unless I mark the following box. If I mark this box , artificial nutrition and hydration must be provided regardless of my condition and regardless of the choice I have made in paragraph (6).

(8) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for alleviation of pain or discomfort be provided at all times, even if it hastens my death:

.....
.....

(9) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that:

.....
.....

(Add additional sheets if needed)
[1995, c. 378, Pt. A, §1 (new).]

PART 3

DONATION OF ORGANS AT DEATH

(OPTIONAL)

(10) Upon my death (mark applicable box)

(a) I give any needed organs, tissues or parts, OR

(b) I give the following organs, tissues or parts only

.....

(c) My gift is for the following purposes (strike any of the following you do not want)

(i) Transplant

(ii) Therapy

(iii) Research

(iv) Education

[1995, c. 378, Pt. A, §1 (new).]

PART 4

PRIMARY PHYSICIAN

(OPTIONAL)

(11) I designate the following physician as my primary physician:

.....

(name of physician)

.....

(address) (city) (state) (zip code)

.....

(phone)

OPTIONAL: If the physician I have designated above is not willing, able or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

.....

(name of physician)

.....

(address) (city) (state) (zip code)

.....

(phone)

(12) EFFECT OF COPY: A copy of this form has the same effect as the original.

(13) SIGNATURES: Sign and date the form here:

.....

(date) (sign your name)

.....

(address) (print your name)

.....

(city) (state)

SIGNATURES OF WITNESSES:

First witness Second witness

.....

(print name) (print name)

.....

(address) (address)

.....

(city) (state) (city) (state)

.....

(signature of witness) (signature of witness)

.....

(date) (date)

[1995, c. 625, Pt. B, §4 (amd).]

Section History:

PL 1995,	Ch. 378,	§A1 (NEW).
PL 1995,	Ch. 625,	§B4 (AMD).
PL 2003,	Ch. 618,	§C3 (AMD).
PL 2003,	Ch. 688,	§M1 (AMD).
PL 2003,	Ch. 688,	§M2 (AFF).