

SC Health Care Power of Attorney (SC Code of Laws § 62-5-504)

South Carolina Code of Laws

Unannotated

Current through the end of the 2013 Session

Title 62 - South Carolina Probate Code

ARTICLE 5.

SECTION 62-5-504. Health care power of attorney; definitions; form.

(A) As used in this section:

(1) "Agent" or "health care agent" means an individual designated in a health care power of attorney to make health care decisions on behalf of a principal.

(2) "Declaration of a desire for a natural death" or "declaration" means a document executed in accordance with the South Carolina Death with Dignity Act or a similar document executed in accordance with the law of another state.

(3) "Health care" means a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and placement in or removal from a facility that provides these forms of care.

(4) "Health care power of attorney" means a durable power of attorney executed in accordance with this section.

(5) "Health care provider" means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this State to administer health care.

(6) "Life-sustaining procedure" means a medical procedure or intervention which serves only to prolong the dying process. Life-sustaining procedures do not include the administration of medication or other treatment for comfort care or alleviation of pain. The principal shall indicate in the health care power of attorney whether the provision of nutrition and hydration through medically or surgically implanted tubes is desired.

(7) "Permanent unconsciousness" means a medical diagnosis, consistent with accepted standards of medical practice, that a person is in a persistent vegetative state or some other irreversible condition in which the person has no neocortical functioning, but only involuntary vegetative or primitive reflex functions controlled by the brain stem.

(8) "Nursing care provider" means a nursing care facility or an employee of the facility.

(9) "Principal" means an individual who executes a health care power of attorney. A principal must be eighteen years of age or older and of sound mind.

(10) "Separated" means that the principal and his or her spouse are separated pursuant to one of the following:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement;

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.

(B)(1) A health care power of attorney is a durable power of attorney pursuant to Section 62-5-501. Sections that refer to a durable power of attorney or judicial interpretations of the law relating to durable powers of attorney apply to a health care power of attorney to the extent that they are not inconsistent with this section.

(2) This section does not affect the right of a person to execute a durable power of attorney relating to health care pursuant to other provisions of law but which does not conform to the requirements of this section. If a durable power of attorney for health care executed under Section 62-5-501 or under the laws of another state does not conform to the requirements of this section, the provisions of this section do not apply to it. However, a court is not precluded from determining that the law applicable to nonconforming durable powers of attorney for health care is the same as the law set forth in this section for health care powers of attorney.

(3) To the extent not inconsistent with this section, the provisions of the Adult Health Care Consent Act apply to the making of decisions by a health care agent and the implementation of those decisions by health care providers.

(4) In determining the effectiveness of a health care power of attorney, mental incompetence is to be determined according to the standards and procedures for inability to consent under Section 44-66-20(6), except that certification of mental incompetence by the agent may be substituted for certification by a second physician. If the certifying physician states that the principal's mental incompetence precludes the principal from making all health care decisions or all decisions concerning certain categories of health care, and that the principal's mental incompetence is permanent or of extended duration, no further certification is necessary in regard to the stated categories of health care decisions during the stated duration of mental incompetence unless the agent or the attending physician believes the principal may have regained capacity.

(C)(1) A health care power of attorney must:

(a) be substantially in the form set forth in subsection (D) of this section;

(b) be dated and signed by the principal or in the principal's name by another person in the principal's presence and by his direction;

(c) be signed by at least two persons, each of whom witnessed either the signing of the health care power of attorney or the principal's acknowledgment of his signature on the health care power of attorney. Each witness must state in an affidavit as set forth in subsection (D) of this section that, at the time of the execution of the health care power of attorney, to the extent the witness has knowledge, the witness is not related to the principal by blood, marriage, or adoption, either as a spouse, lineal ancestor, descendant of the parents of the principal, or spouse of any of them; not directly financially responsible for the principal's medical care; not entitled to any portion of the principal's estate upon his decease under a will of the principal then existing or as an heir by intestate succession; not a beneficiary of a life insurance policy of the principal; and not appointed as health care agent or successor health care agent in the health care power of attorney; and that no more than one witness is an employee of a health facility in which the principal is a patient, no witness is the attending physician or an employee of the attending physician, or no witness has a claim against the principal's estate upon his decease;

(d) state the name and address of the agent. A health care agent must be an individual who is eighteen years of age or older and of sound mind. A health care agent may not be a health care provider, or an employee of a provider, with whom the principal has a provider-patient relationship at the time the health care power of attorney is executed, or an employee of a nursing care facility in which the principal resides, or a spouse of the health care provider or employee, unless the health care provider, employee, or spouse is a relative of the principal.

(2) The validity of a health care power of attorney is not affected by the principal's failure to initial any of the choices provided in Section 4, 6, or 7 of the Health Care Power of Attorney form or to name successor agents. If the principal fails to indicate either of the statements in Section 7 concerning provision of artificial nutrition and hydration, the agent does not have authority to direct that nutrition and hydration necessary for comfort care or alleviation of pain be withheld or withdrawn.

(D) A health care power of attorney executed on or after January 1, 2007 must be substantially in the following form:

INFORMATION ABOUT THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

1. THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISION FOR YOURSELF. THIS POWER INCLUDES THE POWER TO MAKE DECISIONS ABOUT LIFE-SUSTAINING TREATMENT. UNLESS YOU STATE OTHERWISE, YOUR AGENT WILL HAVE THE SAME AUTHORITY TO MAKE DECISIONS ABOUT YOUR HEALTH CARE AS YOU WOULD HAVE.

2. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENTS OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TREATMENT YOU DO NOT DESIRE OR TREATMENT YOU WANT TO BE SURE YOU RECEIVE. YOUR AGENT WILL BE OBLIGATED TO FOLLOW YOUR INSTRUCTIONS WHEN MAKING DECISIONS ON YOUR BEHALF. YOU MAY ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE TO COMPLETE THE STATEMENT.

3. AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.

4. YOU HAVE THE RIGHT TO REVOKE THIS DOCUMENT, AND TERMINATE YOUR AGENT'S AUTHORITY, BY INFORMING EITHER YOUR AGENT OR YOUR HEALTH CARE PROVIDER ORALLY OR IN WRITING.

5. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.

6. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS TWO PERSONS SIGN AS WITNESSES. EACH OF THESE PERSONS MUST EITHER WITNESS YOUR SIGNING OF THE POWER OF ATTORNEY OR WITNESS YOUR ACKNOWLEDGMENT THAT THE SIGNATURE ON THE POWER OF ATTORNEY IS YOURS.

THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

A. YOUR SPOUSE, YOUR CHILDREN, GRANDCHILDREN, AND OTHER LINEAL DESCENDANTS; YOUR PARENTS, GRANDPARENTS, AND OTHER LINEAL ANCESTORS; YOUR SIBLINGS AND THEIR LINEAL DESCENDANTS; OR A SPOUSE OF ANY OF THESE PERSONS.

B. A PERSON WHO IS DIRECTLY FINANCIALLY RESPONSIBLE FOR YOUR MEDICAL CARE.

C. A PERSON WHO IS NAMED IN YOUR WILL, OR, IF YOU HAVE NO WILL, WHO WOULD INHERIT YOUR PROPERTY BY INTESTATE SUCCESSION.

D. A BENEFICIARY OF A LIFE INSURANCE POLICY ON YOUR LIFE.

E. THE PERSONS NAMED IN THE HEALTH CARE POWER OF ATTORNEY AS YOUR AGENT OR SUCCESSOR AGENT.

F. YOUR PHYSICIAN OR AN EMPLOYEE OF YOUR PHYSICIAN.

G. ANY PERSON WHO WOULD HAVE A CLAIM AGAINST ANY PORTION OF YOUR ESTATE (PERSONS TO WHOM YOU OWE MONEY).

IF YOU ARE A PATIENT IN A HEALTH FACILITY, NO MORE THAN ONE WITNESS MAY BE AN EMPLOYEE OF THAT FACILITY.

7. YOUR AGENT MUST BE A PERSON WHO IS 18 YEARS OLD OR OLDER AND OF SOUND MIND. IT MAY NOT BE YOUR DOCTOR OR ANY OTHER HEALTH CARE PROVIDER THAT IS NOW PROVIDING YOU WITH TREATMENT; OR AN EMPLOYEE OF YOUR DOCTOR OR PROVIDER; OR A SPOUSE OF THE DOCTOR, PROVIDER, OR EMPLOYEE; UNLESS THE PERSON IS A RELATIVE OF YOURS.

8. YOU SHOULD INFORM THE PERSON THAT YOU WANT HIM OR HER TO BE YOUR HEALTH CARE AGENT. YOU SHOULD DISCUSS THIS DOCUMENT WITH YOUR AGENT AND YOUR PHYSICIAN AND GIVE EACH A SIGNED COPY. IF YOU ARE IN A HEALTH CARE FACILITY OR A NURSING CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.

HEALTH CARE POWER OF ATTORNEY

(S.C. STATUTORY FORM)

1. DESIGNATION OF HEALTH CARE AGENT

I, _____, hereby appoint:

(Principal)

(Agent's Name) ____

(Agent's Address) ____

Telephone: home: _____ work: _____ mobile: _____ as my agent to make health care decisions for me as authorized in this document.

Successor Agent: If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named:

a. First Alternate Agent:

Address: ____

Telephone: home: _____ work: _____ mobile: _____

b. Second Alternate Agent:

Address: ____

Telephone: home: _____ work: _____ mobile: _____

Unavailability of Agent(s): If at any relevant time the agent or successor agents named here are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence, except as provided in Paragraph 3 below.

3. HIPAA AUTHORIZATION

When considering or making health care decisions for me, all individually identifiable health information and medical records shall be released without restriction to my health care agent(s) and/or my alternate health care agent(s) named above including, but not limited to, (i) diagnostic, treatment, other health care, and related insurance and financial records and information associated with any past, present, or future physical or mental health condition including, but not limited to, diagnosis or treatment of HIV/AIDS, sexually transmitted disease(s), mental illness, and/or drug or alcohol abuse and (ii) any written opinion relating to my health that such health care agent(s) and/or alternate health care agent(s) may have requested. Without limiting the generality of the foregoing, this release authority applies to all health information and medical records governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160-164; is effective whether or not I am mentally competent; has no expiration date; and shall terminate only in the event that I revoke the authority in writing and deliver it to my health care provider.

4. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by the provisions specified below, my agent is authorized as follows:

A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation.

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death.

C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service.

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

E. The powers granted above do not include the following powers or are subject to the following rules or limitations:

—

—

—

5. ORGAN DONATION (INITIAL ONLY ONE)

My agent may ___; may not ___ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

6. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

7. STATEMENT OF DESIRES CONCERNING LIFE-SUSTAINING TREATMENT

With respect to any Life-Sustaining Treatment, I direct the following:

(INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS)

(1) ___ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

OR

(2) ___ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life-sustaining treatment:

a. if I have a condition that is incurable or irreversible and, without the administration of life-sustaining procedures, expected to result in death within a relatively short period of time; or

b. if I am in a state of permanent unconsciousness.

OR

(3) ___ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

8. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that in situations where life-sustaining treatment is being withheld or withdrawn pursuant to Paragraph 7, (INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS):

(1) ___ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged by tube feeding if my agent believes the burdens of tube feeding outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved, and the quality as well as the possible extension of my life in making this decision.

OR

(2) ___ DIRECTIVE TO WITHHOLD OR WITHDRAW TUBE FEEDING. I do not want my life prolonged by tube feeding.

OR

(3) ___ DIRECTIVE FOR PROVISION OF TUBE FEEDING. I want tube feeding to be provided within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedure, and without regard to whether other forms of life-sustaining treatment are being withheld or withdrawn.

IF YOU DO NOT INITIAL ANY OF THE STATEMENTS IN PARAGRAPH 8, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this ___ day of ___, 20 ___. My current home address is:

Principal's Signature: ___

Print Name of Principal: ___

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.

Witness No. 1

Signature: _____ Date: ___

Print Name: _____ Telephone: ___

Address: ___

Witness No. 2

Signature: _____ Date: ____

Print Name: _____ Telephone: ____

Address: ____

(This portion of the document is optional and is not required to create a valid health care power of attorney.)

STATE OF SOUTH CAROLINA

COUNTY OF ____

The foregoing instrument was acknowledged before me by Principal on _____, 20 _____.

Notary Public for South Carolina ____

My Commission Expires: ____

(E) A health care agent has, in addition to the powers set forth in the health care power of attorney, the following specific powers:

(1) to have access to the principal's medical records and information to the same extent that the principal would have access, including the right to disclose the contents to others;

(2) to contract on the principal's behalf for placement in a health care or nursing care facility or for health care related services, without the agent incurring personal financial liability for the contract;

(3) to hire and fire medical, social service, and other support personnel responsible for the principal's care;

(4) to have the same health care facility or nursing care facility visitation rights and privileges of the principal as are permitted to immediate family members or spouses.

(F)(1) The agent is not entitled to compensation for services performed under the health care power of attorney, but the agent is entitled to reimbursement for all reasonable expenses incurred as a result of carrying out the health care power of attorney or the authority granted by this section.

(2) The agent's consent to health care or to the provision of services to the principal does not cause the agent to be liable for the costs of the care or services.

(G) If a principal has been diagnosed as pregnant, life-sustaining procedures may not be withheld or withdrawn pursuant to the health care power of attorney during the course of the principal's pregnancy. This subsection does not otherwise affect the agent's authority to make decisions concerning the principal's obstetrical and other health care during the course of the pregnancy.

(H) A health care provider or nursing care provider having knowledge of the principal's health care power of attorney has a duty to follow directives of the agent that are consistent with the health care power of attorney to the same extent as if they were given by the principal. If it is uncertain whether a directive is consistent with the health care power of attorney, the health care provider, nursing care provider, agent, or other interested person may apply to the probate court for an order determining the

authority of the agent to give the directive.

(I) An agent acting pursuant to a health care power of attorney shall make decisions concerning the principal's health care in accordance with the principal's directives in the health care power of attorney and with any other statements of intent by the principal that are known to the agent and are not inconsistent with the directives in the health care power of attorney. If a principal has a valid Declaration of a Desire for a Natural Death pursuant to Title 44, Chapter 77, the declaration must be given effect in any situation to which it is applicable. The agent named in the health care power of attorney has authority to make decisions only in situations to which the declaration does not apply. However, nothing herein prevents the principal or a person designated by the principal in the declaration from revoking the declaration as provided in Section 44-77-80.

(J)(1) A person who relies in good faith upon a person's representation that he is the person named as agent in a health care power of attorney is not subject to civil or criminal liability or disciplinary action for recognizing the agent's authority.

(2) A health care provider or nursing care provider who in good faith relies on a health care decision made by an agent or successor agent is not subject to civil or criminal liability or disciplinary action on account of relying on the decision.

(3) An agent who in good faith makes a health care decision pursuant to a health care power of attorney is not subject to civil or criminal liability on account of the substance of the decision.

(K)(1) The principal may appoint one or more successor agents in the health care power of attorney in the event an agent dies, becomes legally disabled, resigns, refuses to act, is unavailable, or, if the agent is the spouse of the principal, becomes divorced or separated from the principal. A successor agent will succeed to all duties and powers given to the agent in the health care power of attorney.

(2) If no agent or successor agent is available, willing, and qualified to make a decision concerning the principal's health care, the decision must be made according to the provisions of and by the person authorized by the Adult Health Care Consent Act.

(3) All directives, statements of personal values, or statements of intent made by the principal in the health care power of attorney must be treated as exercises of the principal's right to direct the course of his health care. Decisions concerning the principal's health care made by a guardian, by the probate court, or by a surrogate pursuant to the Adult Health Care Consent Act, must be made in accordance with the directions stated in the health care power of attorney.

(L)(1) A health care power of attorney may be revoked in the following ways:

(a) by a writing, an oral statement, or any other act constituting notification by the principal to the agent or to a health care provider responsible for the principal's care of the principal's specific intent to revoke the health care power of attorney; or

(b) by the principal's execution of a subsequent health care power of attorney or the principal's execution of a subsequent durable power of attorney under Section 62-5-501 if the durable power of attorney states an intention that the health care power of attorney be revoked or if the durable power of attorney is inconsistent with the health care power of attorney.

(2) A health care provider who is informed of or provided with a revocation of a health care power of attorney immediately must record the revocation in the principal's medical record and notify the agent, the attending physician, and all other health care providers or nursing care providers who are responsible for the principal's care.

(M) The execution and effectuation of a health care power of attorney does not constitute suicide for any purpose.

(N) No person may be required to sign a health care power of attorney in accordance with this section as a condition for coverage under an insurance contract or for receiving medical treatment or as a condition of admission to a health care or nursing care facility.

(O) Nothing in this section may be construed to authorize or approve mercy killing or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

(P) The absence of a health care power of attorney by an adult patient does not give rise to a presumption of his intent to consent to or refuse death prolonging procedures. Nothing in this section impairs other legal rights or legal responsibilities which a person may have to effect the provision or the withholding or withdrawal of life-sustaining procedures in a lawful manner.

(Q)(1) If a person coerces or fraudulently induces another person to execute a health care power of attorney, falsifies or forges a health care power of attorney, or wilfully conceals, cancels, obliterates, or destroys a revocation of a health care power of attorney, and the principal dies as a result of the withdrawal or withholding of treatment pursuant to the health care power of attorney, that person is subject to prosecution in accordance with the criminal laws of this State.

(2) Nothing in this section prohibits a person from informing another person of the existence of this section, delivering to another person a copy of this section or a form for a health care power of attorney, or counseling another person in good faith concerning the execution of a health care power of attorney.

(3) If a person wilfully conceals, cancels, defaces, obliterates, or damages a health care power of attorney without the principal's consent, or falsifies or forges a revocation of a health care power of attorney, or otherwise prevents the implementation of the principal's wishes as stated in a health care power of attorney, that person breaches a duty owed to the principal and is responsible for payment of any expenses or other damages incurred as a result of the wrongful act.

(R) A physician or health care facility electing for any reason not to follow an agent's instruction that life-sustaining procedures be withheld or withdrawn as authorized in the health care power of attorney shall make a reasonable effort to locate a physician or health care facility that will follow the instruction and has a duty to transfer the patient to that physician or facility. If a nurse or other employee of a health care provider or nursing care provider gives notice that the employee does not wish to participate in the withholding or withdrawal of life-sustaining procedures as directed by an agent, a reasonable effort shall be made by the physician and the health care provider or nursing care provider to effect the withholding or withdrawal of life-sustaining procedures without the participation of the employee.

(S)(1) Notwithstanding the requirements of subsections (C) and (D) of this section, any document or writing containing the following provisions is deemed to comply with the requirements of this section:

(a) the name and address of the person who meets the requirements of subsection (C)(1)(d) and is authorized to make health care related decisions if the principal becomes mentally incompetent;

(b) the types of health care related decisions that the health care agent is authorized to make;

(c) the signature of the principal;

(d) the signature of at least two persons who witnessed the principal's signature and who meet the requirements of subsection (C)(1)(c); and

(e) the attestation of a notary public.

(2) Additionally, any document that meets the requirements of subsection (S)(1) and also provides expressions of the principal's intentions or wishes with respect to the following health care issues authorizes the health care agent to act in accordance with these provisions:

(a) organ donations;

(b) life-sustaining treatment;

(c) tube feeding;

(d) other kinds of medical treatment that the principal wishes to have or not to have;

(e) comfort and treatment issues;

(f) provisions for interment or disposal of the body after death; and

(g) any written statements that the principal may wish to have communicated on his behalf.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010.