
A BILL FOR AN ACT

RELATING TO HEALTH CARE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that in 1999, the
2 legislature passed the Uniform Health-Care Decisions Act (1993),
3 which was enacted and codified as chapter 327E, Hawaii Revised
4 Statutes, and in 2004, passed an advance mental health care
5 directives law, which was enacted and codified as chapter 327G,
6 Hawaii Revised Statutes.

7 The legislature further finds that these laws should be
8 updated and consolidated into one unified law regarding health
9 care decisions to avoid confusion and conflicting provisions.
10 In 2023, the Uniform Law Commission approved and recommended for
11 enactment in all states the Uniform Health-Care Decisions Act
12 (2023). While existing state law addresses advance directives
13 broadly, the Uniform Health-Care Decisions Act (2023) does so
14 more comprehensively by dividing various types of advance
15 directives into separate sections for power of attorney for
16 health care, health care instructions, and advance mental health
17 care directives.



1 Among other things, the Uniform Health-Care Decisions Act
2 (2023) expands upon the framework for determining whether an
3 individual has capacity, removes legal hurdles for creating
4 advance directives, addresses both advance health care
5 directives and advance mental health care directives within the
6 same statutory framework, and allows an individual to assent to
7 a "Ulysses clause" in an advance mental health care directive,
8 which allows an individual to include an instruction that
9 prevents the individual from revoking the advance directive if
10 the individual is experiencing a psychiatric or psychological
11 event specified in the directive.

12 Therefore, the purpose of this Act is to update laws
13 concerning advance health care directives and advance mental
14 health care directives by adopting the Uniform Health-Care
15 Decisions Act (2023) in amended form.

16 SECTION 2. The Hawaii Revised Statutes is amended by
17 adding a new chapter to be appropriately designated and to read
18 as follows:

19 "CHAPTER

20 HEALTH CARE DECISIONS



1 § **-1 Short title.** This chapter may be cited as the
2 Uniform Health-Care Decisions Act (modified).

3 § **-2 Definitions.** As used in this chapter, unless the
4 context clearly requires otherwise:

5 "Advance health care directive" means a power of attorney
6 for health care, health care instruction, or both. "Advance
7 health care directive" includes an advance mental health care
8 directive.

9 "Advance mental health care directive" means a power of
10 attorney for health care, health care instruction, or both,
11 created under section -9.

12 "Advanced practice registered nurse" means a registered
13 nurse licensed to practice in this State who:

14 (1) Has met the qualifications set forth in chapter 457;

15 (2) Because of advanced education and specialized clinical
16 training, is authorized to assess, screen, diagnose,
17 order, utilize, or perform medical, therapeutic,
18 preventive, or corrective measures; and

19 (3) Holds an accredited national certification in an
20 advanced practice registered nurse psychiatric
21 mental-health specialization.



1 "Agent" means an individual appointed under a power of
2 attorney for health care to make a health care decision for the
3 individual who made the appointment. "Agent" includes a
4 co-agent or alternate agent appointed under section -20.

5 "Capacity" means having capacity under section -3.

6 "Civil union partner" means an individual who is party to a
7 civil union established pursuant to chapter 572B.

8 "Cohabitant" means each of two individuals who have been
9 living together as a couple for at least one year after each
10 became an adult or was emancipated, and who are not married to
11 each other or are not in a civil union with each other.

12 "Default surrogate" means an individual authorized under
13 section -12 to make a health care decision for another
14 individual.

15 "Electronic" means relating to technology having
16 electrical, digital, magnetic, wireless, optical,
17 electromagnetic, or similar capabilities.

18 "Emancipated minor" means a minor deemed to be emancipated
19 pursuant to section 577-25 or order of the family court.

20 "Emergency medical services personnel" has the same meaning
21 as in section 321-222.



1 "Family member" means a spouse, civil union partner, adult
2 child, parent, or grandparent, or an adult child of a spouse,
3 civil union partner, child, parent, or grandparent.

4 "First responder personnel" has the same meaning as in
5 section 321-222.

6 "Guardian" means a person appointed under chapter 560,
7 article v, part 3, by a court to make decisions regarding the
8 personal affairs of an individual, which may include health care
9 decisions. "Guardian" does not include a guardian ad litem.

10 "Health care" means care or treatment or a service or
11 procedure to maintain, monitor, diagnose, or otherwise affect an
12 individual's physical or mental illness, injury, or condition.

13 "Health care" includes mental health care.

14 "Health care decision" means a decision made by an
15 individual or the individual's surrogate regarding the
16 individual's health care, including:

17 (1) Selection or discharge of a health care professional
18 or health care institution;

19 (2) Approval or disapproval of a diagnostic test, surgical
20 procedure, medication, therapeutic intervention, or

21 other health care; and



1 (3) Direction to provide, withhold, or withdraw artificial
2 nutrition or hydration, mechanical ventilation, or
3 other health care.

4 "Health care institution" means a facility or agency
5 licensed, certified, or otherwise authorized or permitted by
6 other law to provide health care in this State in the ordinary
7 course of business.

8 "Health care instruction" means a direction, whether or not
9 in a record, made by an individual that indicates the
10 individual's goals, preferences, or wishes concerning the
11 provision, withholding, or withdrawal of health care. The term
12 includes a direction intended to be effective if a specified
13 condition arises.

14 "Health care professional" means a physician or other
15 individual licensed, certified, or otherwise authorized or
16 permitted by other law of this State to provide health care in
17 this State in the ordinary course of business or the practice of
18 the physician's or individual's profession.

19 "Individual" means an adult or emancipated minor.

20 "Mental health care" means care or treatment or a service
21 or procedure to maintain, monitor, diagnose, or otherwise affect



1 an individual's mental illness or other psychiatric,
2 psychological, or psychosocial condition.

3 "Minor" means a person less than eighteen years of age.

4 "Nursing home" means a nursing facility as defined in
5 section 1919(a)(1) of the Social Security Act, title 42 United
6 States Code section 1396r(a)(1), or skilled nursing facility as
7 defined in section 1819(a)(1) of the Social Security Act,
8 title 42 United States Code section 1395i-3(a)(1).

9 "Person" means an individual, estate, business or nonprofit
10 entity, government or governmental subdivision, agency, or
11 instrumentality, or other legal entity.

12 "Person interested in the welfare of the individual" means:

- 13 (1) The individual's surrogate;
14 (2) A family member of the individual;
15 (3) The cohabitant of the individual;
16 (4) A public entity providing health care case management
17 or protective services to the individual;
18 (5) A person appointed under other law to make decisions
19 for the individual under a power of attorney for
20 finances; or



(6) A person that has an ongoing personal or professional relationship with the individual, including a person that has provided educational or health care services or supported decision making to the individual.

"Physician" means an individual authorized to practice medicine or osteopathy under chapter 453.

"Psychologist" means an individual authorized to practice psychology under chapter 465.

"Power of attorney for health care" means a record in which an individual appoints an agent to make health care decisions for the individual.

"Reasonably available" means being able to be contacted without undue effort and being willing and able to act in a timely manner considering the urgency of an individual's health care situation. When used to refer to an agent or default surrogate, "reasonably available" includes being willing and able to comply with the duties under section -17 in a timely manner considering the urgency of an individual's health care situation.

"Record" means information:

(1) Inscribed on a tangible medium; or



(2) Stored in an electronic or other medium and
retrievable in perceivable form.

"Responsible health care professional" means:

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

(2) In the absence of a designation under paragraph (1)
or, if the professional designated under paragraph (1)
is not reasonably available, a health care
professional who has primary responsibility for
overseeing the individual's health care or for
overseeing a course of treatment.

"Sign" means, with present intent to authenticate or adopt
a record:

(1) Execute or adopt a tangible symbol; or

(2) Attach to or logically associate with the record an
electronic symbol, sound, or process.

"State" means a state of the United States, the District of
Columbia, Puerto Rico, the United States Virgin Islands, or any
other territory or possession subject to the jurisdiction of the



1 United States. "State" includes a federally recognized Indian
2 tribe.

3 "Supported decision making" means assistance, from one or
4 more persons of an individual's choosing, that helps the
5 individual make or communicate a decision, including by helping
6 the individual understand the nature and consequences of the
7 decision.

8 "Surrogate" means:

- 9 (1) An agent;
10 (2) A default surrogate; or
11 (3) A guardian authorized to make health care decisions.

12 **§ -3 Capacity.** (a) An individual shall be deemed to
13 have capacity for the purpose of this chapter if the individual:

- 14 (1) Is willing and able to communicate a decision
15 independently or with appropriate services,
16 technological assistance, supported decision making,
17 or other reasonable accommodation; and
18 (2) In making or revoking:
19 (A) A health care decision, understands the nature
20 and consequences of the decision, including the
21 primary risks and benefits of the decision;



1 (B) A health care instruction, understands the nature
2 and consequences of the instruction, including
3 the primary risks and benefits of the choices
4 expressed in the instruction; and

5 (C) An appointment of an agent under a health care
6 power of attorney or identification of a default
7 surrogate under section -12(b), recognizes the
8 identity of the person being appointed or
9 identified and understands the general nature of
10 the relationship of the individual making the
11 appointment or identification with the person
12 being appointed or identified.

13 (b) The right of an individual who has capacity to make a
14 decision about the individual's health care shall not be
15 affected by whether the individual creates or revokes an advance
16 health care directive.

17 **§ -4 Presumption of capacity; overcoming presumption.**

18 (a) An individual shall be presumed to have capacity to make or
19 revoke a health care decision, health care instruction, and
20 power of attorney for health care unless:



1 (1) A court has found the individual lacks capacity to do
2 so; or

3 (2) The presumption is rebutted under subsection (b).

4 (b) Subject to sections -5 and -6, a presumption
5 under subsection (a) may be rebutted by a finding that the
6 individual lacks capacity:

7 (1) Subject to subsection (c), made on the basis of a
8 contemporaneous examination by any of the following
9 health care professionals:

10 (A) A physician;

11 (B) A psychologist; or

12 (C) An advanced practice registered nurse;

13 (2) Made in accordance with accepted standards of the
14 profession and the scope of practice of the health
15 care professional making the finding and to a
16 reasonable degree of certainty; and

17 (3) Documented in a record signed by the health care
18 professional making the finding that includes an
19 opinion of the cause, nature, extent, and probable
20 duration of the lack of capacity.

21 (c) The finding under subsection (b) shall not be made by:



(1) A family member of the individual presumed to have capacity;

(2) The cohabitant of the individual or a family member of the cohabitant; or

(3) The individual's surrogate or a family member of the surrogate.

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

§ -5 Notice of finding of lack of capacity; right to object. (a) As soon as reasonably feasible, a health care professional who makes a finding under section -4(b) shall inform the individual about whom the finding was made or the individual's responsible health care professional of the finding.

(b) As soon as reasonably feasible, a responsible health care professional who is informed of a finding under



1 section -4(b) shall inform the individual about whom the
2 finding was made and the individual's surrogate.

3 (c) An individual found under section -4(b) to lack
4 capacity may object to the finding:

5 (1) By orally informing a responsible health care
6 professional;

7 (2) In a record provided to a responsible health care
8 professional or the health care institution in which
9 the individual resides or is receiving care; or

10 (3) By another act that clearly indicates the individual's
11 objection.

12 (d) If the individual objects under subsection (c), the
13 individual shall be treated as having capacity unless:

14 (1) The individual withdraws the objection;

15 (2) A court finds the individual lacks the presumed
16 capacity;

17 (3) The individual is experiencing a health condition
18 requiring a decision regarding health care treatment
19 to be made promptly to avoid imminent loss of life or
20 serious harm to the health of the individual; or



(4) Subject to subsection (e), the finding is confirmed by a second finding made by a health care professional authorized under section -4(b)(1) who:

(A) Did not make the first finding;

(B) Is not a family member of the health care professional who made the first finding; and

(C) Is not the cohabitant of the health care professional who made the first finding or a family member of the cohabitant.

(e) A second finding that the individual lacks capacity under subsection (d)(4) shall not be sufficient to rebut the presumption of capacity if the individual is requesting the provision or continuation of life-sustaining treatment and the finding is being used to make a decision to withhold or withdraw the treatment.

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

(1) Communicate the objection to a responsible health care professional; and



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

§ -6 Judicial review of finding of lack of capacity.

(a) An individual found under section -4(b) to lack capacity, a responsible health care professional, the health care institution providing health care to the individual, or a person interested in the welfare of the individual may petition the family court in the county where the individual resides or is located to determine whether the individual lacks capacity.

(b) The court in which a petition under subsection (a) is filed may appoint a guardian ad litem. The court shall hear the petition as soon as practicable after the petition is filed. As soon as practicable after the hearing, the court shall determine whether the individual lacks capacity. The court may determine that the individual lacks capacity only if the court finds by



1 clear and convincing evidence that the individual lacks
2 capacity.

3 **§ -7 Health care instruction.** (a) An individual may
4 create a health care instruction that expresses the individual's
5 preferences for future health care, including preferences
6 regarding:

- 7 (1) Health care professionals or health care institutions;
8 (2) How a health care decision will be made and
9 communicated;
10 (3) Persons that should or should not be consulted
11 regarding a health care decision;
12 (4) A person to serve as guardian for the individual if
13 one is appointed; and
14 (5) An individual to serve as a default surrogate.
15 (b) A health care professional to whom an individual
16 communicates or provides an instruction under subsection (a)
17 shall document and maintain the instruction and the date of the
18 instruction in the individual's medical record or communicate
19 the instruction and date of the instruction to an administrator
20 with responsibility for medical records of the health care
21 institution providing health care to the individual, who shall



1 document and maintain the instruction and the date of the
2 instruction in the individual's medical record.

3 (c) A health care instruction made by an individual that
4 conflicts with an earlier health care instruction made by the
5 individual, including an instruction documented in a medical
6 order, shall revoke the earlier instruction to the extent of the
7 conflict.

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

10 § -8 Power of attorney for health care. (a) An
11 individual may create a power of attorney for health care to
12 appoint an agent to make health care decisions for the
13 individual.

14 (b) A person shall be disqualified from acting as an agent
15 for an individual who is found under section -4(b) or by a
16 court to lack capacity to make health care decisions if:

17 (1) A court finds that the potential agent poses a danger
18 to the individual's well-being, even if the court does
19 not issue a restraining order or injunction against
20 the potential agent; or



1 (2) The potential agent is an owner, operator, employee,
2 or contractor of a nursing home, or other residential
3 care facility in which the individual resides or is
4 receiving care, unless the owner, operator, employee,
5 or contractor is a family member of the individual,
6 the cohabitant of the individual, or a family member
7 of the cohabitant.

8 (c) A health care decision made by an agent shall be
9 effective without judicial approval.

10 (d) A power of attorney for health care shall be in a
11 record, signed by the individual creating the power, and signed
12 by an adult witness who:

13 (1) Reasonably believes the act of the individual to
14 create the power of attorney is voluntary and knowing;

15 (2) Is not:

16 (A) The agent appointed by the individual;

17 (B) The agent's spouse, civil union partner, or
18 cohabitant;

19 (C) If the individual resides or is receiving care in
20 a nursing home or other residential care
21 facility, the owner, operator, employee, or



1 contractor of the nursing home or other

2 residential care facility;

3 (D) Related to the individual by blood, marriage, or
4 adoption; or

5 (E) Entitled to any portion of the estate upon the
6 individual's death; and

7 (3) Is present when the individual signs the power of
8 attorney or when the individual represents that the
9 power of attorney reflects the individual's wishes.

10 (e) A witness under subsection (d) shall be considered
11 present if the witness and the individual are:

12 (1) Physically present in the same location;

13 (2) Using electronic means that allow for real time audio
14 and visual transmission and communication in real time
15 to the same extent as if the witness and the
16 individual were physically present in the same
17 location; or

18 (3) Able to speak to and hear each other in real time
19 through audio connection if:

20 (A) The identity of the individual is personally
21 known to the witness; or



1 (B) The witness is able to authenticate the identity
2 of the individual by receiving accurate answers
3 from the individual that enable the
4 authentication.

5 (f) A power of attorney for health care may include a
6 health care instruction.

7 § -9 Advance mental health care directive. (a) An
8 individual may create an advance health care directive that
9 addresses only mental health care for the individual. The
10 directive may include a health care instruction, a power of
11 attorney for health care, or both.

12 (b) A health care instruction under this section may
13 include the individual's:

14 (1) General philosophy and objectives regarding mental
15 health care;

16 (2) Specific goals, preferences, and wishes regarding the
17 provision, withholding, or withdrawal of a form of
18 mental health care, including:

19 (A) Preferences regarding professionals, programs,
20 and facilities;



- 1 (B) Admission to a mental health care facility,
2 including duration of admission;
3 (C) Preferences regarding medications;
4 (D) Refusal to accept a specific type of mental
5 health care, including medication; and
6 (E) Preferences regarding crisis intervention.

7 (c) A power of attorney for health care under this section
8 may appoint an agent to make decisions only for mental health
9 care.

10 (d) An individual may direct in an advance mental health
11 care directive that, if the individual is experiencing a
12 psychiatric or psychological event specified in the directive,
13 the individual may not revoke the directive or a part of the
14 directive.

15 (e) If an advance mental health care directive includes a
16 direction under subsection (d), the advance mental health care
17 directive shall be signed by the individual creating the advance
18 mental health care directive and at least two adult witnesses
19 who:

20 (1) Attest that to the best of their knowledge the
21 individual:



1 (A) Understood the nature and consequences of the
2 direction, including its risks and benefits; and

3 (B) Made the direction voluntarily and without
4 coercion or undue influence;

5 (2) Are not:

6 (A) The agent appointed by the individual;

7 (B) The agent's spouse, civil union partner, or
8 cohabitant; and

9 (C) If the individual resides in a nursing home or
10 other residential care facility the owner,
11 operator, employee, or contractor of the nursing
12 home or other residential care facility;

13 (D) Related to the individual by blood, marriage, or
14 adoption; or

15 (E) Entitled to any portion of the estate upon the
16 individual's death; and

17 (3) Are physically present in the same location as the
18 individual.

19 **§ -10 Relationship of advance mental health care**

20 **directive and other advance health care directive.** (a) If a
21 direction in an advance mental health care directive of an



1 individual conflicts with a direction in another advance health
2 care directive of the individual, the later direction shall
3 revoke the earlier direction to the extent of the conflict.

4 (b) An appointment of an agent to make decisions only for
5 mental health care for an individual shall not revoke an earlier
6 appointment of an agent to make other health care decisions for
7 the individual.

8 (c) An appointment of an agent to make decisions only for
9 mental health care decisions for an individual shall revoke an
10 earlier appointment of an agent to make mental health care
11 decisions for the individual unless otherwise specified in the
12 later appointment.

13 (d) An appointment of an agent to make health care
14 decisions for an individual other than decisions about mental
15 health care shall not revoke a prior appointment of an agent to
16 make only mental health care decisions.

17 § -11 **Model forms.** The department of health, in
18 consultation with the department of the attorney general, shall
19 develop, publish, and update as appropriate model forms of
20 advance health care directives and advance mental health care



1 directives, which shall be posted on the department of health's
2 website.

3 § **-12 Default surrogate.** (a) A default surrogate may
4 make a health care decision for an individual who lacks capacity
5 to make health care decisions and for whom an agent, or guardian
6 authorized to make health care decisions, has not been appointed
7 or is not reasonably available.

8 (b) Upon determination that an individual lacks capacity
9 to make health care decisions, a responsible health care
10 professional or the responsible health care professional's
11 designee shall make reasonable efforts to notify the individual
12 of the individual's lack of capacity to make health care
13 decisions. If the individual has not appointed an agent and the
14 individual retains capacity under section -3(a)(1) and
15 (2)(C), the individual may identify a person to act as a default
16 surrogate.

17 (c) Unless the individual has an advance health care
18 directive that indicates otherwise or the person identified by
19 the individual under subsection (b) is designated as a default
20 surrogate, the responsible health care professional or the
21 responsible health care professional's designee shall make



1 reasonable efforts to locate as many interested persons as
2 practicable, and the responsible health care professional or the
3 responsible health care professional's designee may rely on the
4 interested persons to notify other family members or interested
5 persons. Upon locating interested persons, the responsible
6 health care professional or the responsible health care
7 professional's designee shall inform the interested persons of
8 the individual's lack of capacity and that a default surrogate
9 should be selected for the individual.

10 (d) Interested persons shall make reasonable efforts to
11 reach a consensus as to who among them shall act as the
12 individual's default surrogate. If the person selected to act
13 as the individual's default surrogate is disqualified or becomes
14 disqualified under section -13, the interested persons shall
15 make reasonable efforts to reach consensus as to who among them
16 shall act as the individual's default surrogate.

17 The person selected to act as the individual's default
18 surrogate shall be the person who has a close relationship with
19 the individual and who is the most likely to be currently
20 informed of the individual's wishes regarding health care
21 decisions.



1 (e) If any of the interested persons disagrees with the
2 selection of the default surrogate or the health care decision
3 by the default surrogate, or, if after reasonable efforts the
4 interested persons are unable to reach a consensus as to who
5 should act as the default surrogate, any of the interested
6 persons may seek guardianship of the individual by initiating
7 guardianship proceedings pursuant to chapter 551 or chapter 560,
8 as applicable. Only interested persons involved in the
9 discussions to choose a default surrogate may initiate such
10 proceedings with regard to the individual.

11 (f) A responsible health care professional may require a
12 person who assumes authority to act as a default surrogate to
13 provide a signed declaration in a record under penalty of law
14 stating facts and circumstances reasonably sufficient to
15 establish the authority. The signed declaration shall include
16 the following:

- 17 (1) The name of the person who seeks to assume the
18 authority to act as a default surrogate;
- 19 (2) An affirmation that the person understands that the
20 statements and affirmations are made under the penalty
21 of law;



1 (3) An affirmation that the person had a relationship with
2 the individual who lacks capacity prior to the
3 individual becoming incapacitated;

4 (4) A statement defining that relationship, including
5 identifying the relationship of the person to the
6 individual;

7 (5) If the person is not a family member or cohabitant, a
8 statement describing how the person exhibited special
9 care and concern for the individual who lacks capacity
10 and is familiar with the individual's personal values;
11 and

12 (6) Affirmation that the person understands that the
13 health care professional will reasonably rely on the
14 person's representations in the declaration to assist
15 in providing medical treatment.

16 (g) If a responsible health care professional reasonably
17 determines that a person who assumed authority to act as a
18 default surrogate is not willing or able to comply with a duty
19 under section -17 or fails to comply with the duty in a
20 timely manner, the professional may request interested persons
21 to choose another default surrogate.



1 (h) A health care decision made by a default surrogate
2 shall be effective without judicial approval.

3 (i) As used in this section, unless the context clearly
4 requires otherwise, "interested persons" means any of the
5 individual's family members or any adult who has exhibited
6 special care and concern for the individual and who is familiar
7 with the individual's personal values.

8 **§ -13 Disqualification to act as default surrogate. (a)**

9 An individual for whom a health care decision would be made may
10 disqualify a person from acting as default surrogate for the
11 individual by expressing the wish to disqualify that person.

12 The disqualification shall be in a record signed by the
13 individual or communicated verbally or nonverbally by the
14 individual to the person being disqualified, another person, or
15 a responsible health care professional. If the individual has
16 expressed that the individual did not want a particular person
17 to make health care decisions for the individual, that person
18 shall be disqualified from being a default surrogate.

19 Disqualification under this subsection shall be effective even
20 if made by an individual who is found under section -4(b) or
21 by a court to lack capacity to make a health care decision if



1 the individual clearly communicates a desire that the person
2 being disqualified not make health care decisions for the
3 individual.

4 (b) A person shall be disqualified from acting as a
5 default surrogate for an individual who lacks capacity to make
6 health care decisions if:

7 (1) A court finds that the potential default surrogate
8 poses a danger to the individual's well-being, even if
9 the court does not issue a restraining order or
10 injunction against the potential surrogate;

11 (2) The potential default surrogate is an owner, operator,
12 employee, or contractor of a nursing home or other
13 residential care facility in which the individual is
14 residing or receiving care unless the owner, operator,
15 employee, or contractor is a family member of the
16 individual, the cohabitant of the individual, or a
17 family member of the cohabitant;

18 (3) The potential default surrogate refuses to provide a
19 timely declaration under section -12(f) upon the
20 request by a responsible health care professional; or



(4) The potential default surrogate is the individual's spouse or civil union partner, and:

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

(B) A decree of annulment, divorce, or dissolution of marriage, legal separation, or termination has been issued, the individual and the spouse or civil union partner have agreed in a record to a legal separation; or

(C) The spouse or civil union partner has abandoned or deserted the individual for more than one year.

(c) Notwithstanding subsection (b)(4), a spouse or civil union partner shall not be disqualified if the individual has retained capacity under section -3(a)(1) and (2)(C) and expresses the wish not to disqualify the spouse or civil union partner as a default surrogate.

§ -14 **Revocation.** (a) An individual may revoke the appointment of an agent, the designation of a default surrogate, or a health care instruction in whole or in part, unless:



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

2 (2) The individual is found under section -4(b) to lack
3 capacity to do so and, if the individual objects to
4 the finding, the finding is confirmed under section
5 -5(d)(4); or

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

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

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

19 (d) Unless otherwise provided in an individual's advance
20 health care directive appointing an agent, the appointment of a



1 spouse or civil union partner of an individual as agent for the
2 individual shall be revoked if:

3 (1) A petition for annulment, divorce, legal separation,
4 or termination has been filed and not dismissed or
5 withdrawn;

6 (2) A decree of annulment, divorce, legal separation, or
7 termination has been issued;

8 (3) The individual and the spouse or civil union partner
9 have agreed in a record to a legal separation; or

10 (4) The spouse or civil union partner has abandoned or
11 deserted the individual for more than one year.

12 § -15 **Withdrawal of agent.** An agent may withdraw by
13 giving notice to the individual for whom the agent is acting, if
14 the individual has capacity at the time. If the individual is
15 found under section -4(b) or by a court to lack capacity, the
16 agent may withdraw by giving notice to a responsible health care
17 professional.

18 § -16 **Validity of advance health care directive;**
19 **conflict with other law.** (a) An advance health care directive
20 created outside this State shall be valid if it complies with:



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

(2) This chapter.

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

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

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

(e) This chapter shall not affect the validity of an electronic record or signature that is valid under chapter 489E.

(f) If this chapter conflicts with other laws of this State relating to the creation, execution, implementation, or



1 revocation of an advance health care directive, this chapter
2 shall prevail.

3 **§ -17 Duties of agent and default surrogate.** (a) An
4 agent or default surrogate shall have a fiduciary duty to the
5 individual for whom the agent or default surrogate is acting
6 when exercising or purporting to exercise a power under
7 section -18.

8 (b) An agent or default surrogate shall make a health care
9 decision in accordance with the direction of the individual in
10 an advance health care directive and other goals, preferences,
11 and wishes of the individual to the extent known or reasonably
12 ascertainable by the agent or default surrogate.

13 (c) If there is not a direction in an advance health care
14 directive and the goals, preferences, and wishes of the
15 individual regarding a health care decision are not known or
16 reasonably ascertainable by the agent or default surrogate, the
17 agent or default surrogate shall make the decision in accordance
18 with the agent's or default surrogate's determination of the
19 individual's best interest.

20 (d) In determining the individual's best interest under
21 subsection (c), the agent or default surrogate shall:



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

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

(3) Consider the risks and benefits of the potential health care decision.

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

§ -18 Powers of agent and default surrogate. (a)

Except as provided in subsection (c), the power of an agent or default surrogate shall commence when the individual is found under section -4(b) or by a court to lack capacity to make a health care decision. The power shall cease if the individual later is found to have capacity to make a health care decision, or the individual objects under section -5(c) to the finding



1 of lack of capacity under section -4(b). The power shall
2 resume if:

3 (1) The power ceased because the individual objected under
4 section -5(c); and

5 (2) The finding of lack of capacity is confirmed under
6 section -5(d)(4) or a court finds that the
7 individual lacks capacity to make a health care
8 decision.

9 (b) An agent or default surrogate may request, receive,
10 examine, copy, and consent to the disclosure of medical and
11 other health care information about the individual if the
12 individual would have the right to request, receive, examine,
13 copy, or consent to the disclosure of the information.

14 (c) A power of attorney for health care may provide that
15 the power of an agent under subsection (b) commences on
16 appointment.

17 (d) If no other person is authorized to do so, an agent or
18 default surrogate may apply for private health insurance and
19 benefits on behalf of the individual. An agent or default
20 surrogate who may apply for insurance and benefits shall not,



1 solely by reason of the power, have a duty to apply for the
2 insurance or benefits.

3 A default surrogate may act as a medicaid authorized
4 representative, pursuant to federal and state medicaid laws
5 relating to authorized representatives, on the individual's
6 behalf for the purposes of medicaid, including assisting with,
7 submitting, and executing a medicaid application,
8 redetermination of eligibility, or other on-going
9 medicaid-related communications with the department of human
10 services. For the purposes of medicaid, the default surrogate
11 may access medicaid records of the individual on whose behalf
12 the default surrogate is designated to act. For a default
13 surrogate to be able to act under this subsection, the default
14 surrogate shall agree to be legally bound by the federal and
15 state authorities related to authorized representatives,
16 including maintaining the confidentiality of any information
17 provided by the department of human services, in compliance with
18 all state and federal confidentiality laws.

19 The default surrogate's status as an authorized
20 representative for the purposes of medicaid shall terminate when
21 revoked by an individual who no longer lacks capacity, upon



1 appointment or availability of another agent or guardian, or
2 upon the individual's death.

3 (e) An agent or default surrogate shall not consent to
4 voluntary admission of the individual to a facility for mental
5 health treatment unless:

6 (1) Voluntary admission is specifically authorized by the
7 individual in an advance health care directive in a
8 record; and

9 (2) The admission is for no more than the maximum of the
10 number of days specified in the directive or thirty
11 days, whichever is less.

12 (f) An agent or default surrogate may consent to placement
13 of the individual in a nursing home without specific
14 authorization by the individual; provided that if the placement
15 is intended to be for more than one hundred days an agent or
16 default surrogate shall not consent to placement of the
17 individual in a nursing home if:

18 (1) An alternative living arrangement is reasonably
19 feasible;

20 (2) The individual objects to the placement; or

21 (3) The individual is not terminally ill.



1 Nothing in this subsection shall prevent an agent or
2 default surrogate from consenting to placement of the individual
3 in a nursing home for more than one hundred days if the
4 individual specifically authorizes the agent or default
5 surrogate to do so in an advance health care directive in a
6 record.

7 § -19 **Limitation on powers.** (a) If an individual has a
8 long-term disability requiring routine treatment by artificial
9 nutrition, hydration, or mechanical ventilation and a history of
10 using the treatment without objection, an agent or default
11 surrogate shall not consent to withhold or withdraw the
12 treatment unless:

13 (1) The treatment is not necessary to sustain the
14 individual's life or maintain the individual's
15 well-being;

16 (2) The individual has expressly authorized the
17 withholding or withdrawal in a health care instruction
18 that has not been revoked; or

19 (3) The individual has experienced a major reduction in
20 health or functional ability from which the individual



1 is not expected to recover, even with other
2 appropriate treatment, and the individual has not:

3 (A) Given a direction inconsistent with withholding
4 or withdrawal; or

5 (B) Communicated by verbal or nonverbal expression a
6 desire for artificial nutrition, hydration, or
7 mechanical ventilation.

8 (b) A default surrogate shall not make a health care
9 decision if, under other laws of this State, the decision:

10 (1) May not be made by a guardian; or

11 (2) May be made by a guardian only if the court appointing
12 the guardian specifically authorizes the guardian to
13 make the decision.

14 § -20 **Co-agents; alternate agent.** (a) An individual
15 may appoint multiple individuals as co-agents in a power of
16 attorney for health care. Unless the power of attorney provides
17 otherwise, each co-agent may exercise independent authority.

18 (b) An individual in a power of attorney for health care
19 may appoint one or more individuals to act as alternate agents
20 if a predecessor agent withdraws, dies, becomes disqualified, is



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

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

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

10 (2) If the original agent and all other predecessor agents
11 have withdrawn, died, or are disqualified from acting
12 as agent.

13 § -21 Duties of health care professional, responsible
14 health care professional, and health care institution. (a) A
15 responsible health care professional who is aware that an
16 individual has been found under section -4(b) or by a court
17 to lack capacity to make a health care decision shall make a
18 reasonable effort to determine if the individual has a
19 surrogate.

20 (b) If possible before implementing a health care decision
21 made by a surrogate, a responsible health care professional as



1 soon as reasonably feasible shall communicate to the individual
2 the decision made and the identity of the surrogate.

3 (c) A responsible health care professional who makes or is
4 informed of a finding that an individual lacks capacity to make
5 a health care decision or no longer lacks capacity, or that
6 other circumstances exist that affect a health care instruction
7 or the authority of a surrogate, as soon as reasonably feasible,
8 shall:

- 9 (1) Document the finding or circumstance in the
10 individual's medical record; and
11 (2) If possible, communicate to the individual and the
12 individual's surrogate the finding or circumstance and
13 that the individual may object under section -5(c)
14 to the finding under section -4(b).

15 (d) A responsible health care professional who is informed
16 that an individual has created or revoked an advance health care
17 directive, or that a surrogate for an individual has been
18 appointed, designated, or disqualified, or has withdrawn, shall:

- 19 (1) Document the information as soon as reasonably
20 feasible in the individual's medical record; and



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

(e) Except as provided in subsections (f) and (g), a health care professional or health care institution providing health care to an individual shall comply with:

(1) A health care instruction given by the individual regarding the individual's health care;

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

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

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



- 1 (1) The instruction or decision is contrary to a policy of
2 the health care institution providing care to the
3 individual and the policy was timely communicated to
4 the individual with capacity or to the individual's
5 surrogate;
- 6 (2) The care would require health care that is not
7 available to the professional or institution; or
- 8 (3) Compliance with the instruction or decision would:
- 9 (A) Require the professional to provide care that is
10 contrary to the professional's religious belief
11 or moral conviction and if other law permits the
12 professional to refuse to provide care for that
13 reason;
- 14 (B) Require the professional or institution to
15 provide care that is contrary to generally
16 accepted health care standards applicable to the
17 professional or institution; or
- 18 (C) Violate a court order or other law.
- 19 (g) A health care professional or health care institution
20 that refuses to provide care under subsection (f) shall:



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

4 (2) Immediately make a reasonable effort to transfer the
5 individual to another health care professional or
6 health care institution that is willing to comply with
7 the instruction or decision and provide
8 life-sustaining care and care needed to keep or make
9 the individual comfortable, consistent with accepted
10 medical standards to the extent feasible, until a
11 transfer is made.

12 § -22 **Decision by guardian.** (a) A guardian may refuse
13 to comply with or revoke the individual's advance health care
14 directive only if the court appointing the guardian expressly
15 orders the noncompliance or revocation.

16 (b) Unless a court orders otherwise, a health care
17 decision made by an agent appointed by an individual subject to
18 guardianship prevails over a decision of the guardian appointed
19 for the individual.

20 § -23 **Immunity.** (a) A health care professional or
21 health care institution acting in good faith shall not be



1 subject to civil or criminal liability or to discipline for
2 unprofessional conduct for:

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

8 (2) Refusing to comply with a health care decision made
9 for an individual by another person if the refusal is
10 based on a reasonable belief that the person lacked
11 authority or capacity to make the decision;

12 (3) Complying with an advance health care directive based
13 on a reasonable belief that the directive is valid;

14 (4) Refusing to comply with an advance health care
15 directive based on a reasonable belief that the
16 directive is not valid, including a reasonable belief
17 that the directive was not made by the individual or,
18 after its creation, was substantively altered by a
19 person other than the individual who created it;



(5) Determining that a person who otherwise might be authorized to act as an agent or default surrogate is not reasonably available; or

(6) Complying with an individual's direction under section -9(d).

(b) An agent, default surrogate, or person with a reasonable belief that the person is an agent or a default surrogate shall not be subject to civil or criminal liability or to discipline for unprofessional conduct for a health care decision made in a good faith effort to comply with section -17.

§ -24 **Prohibited conduct; damages.** (a) A person shall not:

(1) Intentionally falsify, in whole or in part, an advance health care directive;

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

(A) Intentionally conceal, deface, obliterate, or delete the directive or a revocation of the



1 directive without consent of the individual who
2 created or revoked the directive; or

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

8 (3) Coerce or fraudulently induce an individual to create,
9 revoke, or refrain from creating or revoking an
10 advance health care directive or a part of a
11 directive; or

12 (4) Require or prohibit the creation or revocation of an
13 advance health care directive as a condition for
14 providing health care.

15 (b) An individual who is the subject of conduct prohibited
16 under subsection (a), or the individual's estate, has a cause of
17 action against a person that violates subsection (a) for
18 statutory damages of \$25,000 or actual damages resulting from
19 the violation, whichever is greater.

20 (c) Subject to subsection (d), an individual who makes a
21 health care instruction, or the individual's estate, has a cause



1 of action against a health care professional or health care
2 institution that intentionally violates section -21 for
3 statutory damages of \$50,000 or actual damages resulting from
4 the violation, whichever is greater.

5 (d) An emergency department of a health care institution
6 or health care professional who is an emergency medical services
7 personnel or first responder personnel shall not be liable under
8 subsection (c) for a violation of section -21(e) if:

9 (1) The violation occurs in the course of providing care
10 to an individual experiencing a health condition for
11 which the professional reasonably believes the care is
12 appropriate to avoid imminent loss of life or serious
13 harm to the individual or providing care;

14 (2) The failure to comply is consistent with accepted
15 standards of the profession of the professional; and

16 (3) The provision of care does not begin in a health care
17 institution in which the individual resides or was
18 receiving care.

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



(f) A cause of action or remedy under this section shall be in addition to any cause of action or remedy under other law.

§ -25 Effect of copy; certified physical copy. (a) A physical or electronic copy of an advance health care directive, revocation of an advance health care directive, or appointment, designation, or disqualification of a surrogate shall have the same effect as the original.

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

§ -26 Judicial relief. (a) On petition of an individual, the individual's surrogate, a health care professional or health care institution providing health care to the individual, or a person interested in the welfare of the individual, the family court may:

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



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

(A) Is disqualified under section -8(b);

(B) Is unwilling or unable to comply with section -17; or

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

(3) Enjoin another person from acting as a default surrogate, on a finding that the other person acting as a default surrogate did not comply with section -12 or the other person:

(A) Is disqualified under section -13;

(B) Is unwilling or unable to comply with section -17; or

(C) Poses a danger to the well-being of the individual for whom the person is acting as a default surrogate; or

(4) Order the implementation of a health care decision made:

(A) By and for the individual; or



1 (B) By an agent or default surrogate who is acting in
2 compliance with the powers and duties of the
3 agent or default surrogate.

4 (b) In this chapter, advocacy for the withholding or
5 withdrawal of health care or mental health care from an
6 individual shall not by itself be evidence that an agent or
7 default surrogate, or a potential agent or default surrogate,
8 poses a danger to the individual's well-being.

9 (c) A petition filed under this section shall include
10 notice of the existence of an advance health care directive, if
11 applicable, and a copy of the directive shall be provided to the
12 court.

13 (d) A proceeding under this section shall be expedited on
14 motion by any party.

15 § -27 Construction. (a) Nothing in this chapter shall
16 be construed to authorize mercy killing, assisted suicide, or
17 euthanasia.

18 (b) This chapter shall not affect other law of this State
19 governing treatment for mental illness of an individual
20 involuntarily committed, or an individual who is the subject of
21 an assisted community order, under chapter 334.



1 (c) Death of an individual caused by withholding or
2 withdrawing health care in accordance with this chapter shall
3 not constitute a suicide or homicide or legally impair or
4 invalidate a policy of insurance or an annuity providing a death
5 benefit, notwithstanding any term of the policy or annuity.

6 (d) Nothing in this chapter shall create a presumption
7 concerning the intention of an individual who has not created an
8 advance health care directive.

9 (e) An advance health care directive created before, on,
10 or after January 1, 2026, shall be interpreted in accordance
11 with other laws of this State, excluding the State's
12 choice-of-law rules, at the time the directive is implemented.

13 § -28 **Uniformity of application and construction.** In
14 applying and construing this chapter, a court may consider the
15 promotion of uniformity of the law among jurisdictions that
16 enact it.

17 § -29 **Saving provisions.** (a) An advance health care
18 directive created before January 1, 2026, shall be valid on
19 January 1, 2026, if it complies with this chapter or complied at
20 the time of creation with the law of the state in which it was
21 created.



(b) This chapter shall not affect the validity or effect of an act done before January 1, 2026.

(c) A person who assumed authority to act as default surrogate before January 1, 2026, may continue to act as default surrogate until the individual for whom the default surrogate is acting regains capacity to make health care decisions or the default surrogate is disqualified, whichever occurs first.

§ -30 Transitional provision. This chapter applies to an advance health care directive created before, on, or after January 1, 2026."

SECTION 3. Section 321-23.6, Hawaii Revised Statutes, is amended to read as follows:

"§321-23.6 Rapid identification documents. (a) The department shall adopt rules for emergency medical services that shall include:

- (1) Uniform methods of rapidly identifying an ~~adult~~ person, individual who is an adult or emancipated minor, who has certified, or for whom has been certified, in a written "comfort care only" document that the ~~person~~ individual or, consistent with chapter ~~[327E],~~ the ~~[person's guardian, agent, or]~~



1 individual's surrogate directs emergency medical
2 services personnel, first responder personnel, and
3 health care providers not to administer chest
4 compressions, rescue breathing, electric shocks, or
5 medication, or all of these, given to restart the
6 heart if the [~~person's~~] individual's breathing or
7 heart stops, and directs that the [~~person~~] individual
8 is to receive care for comfort only, including oxygen,
9 airway suctioning, splinting of fractures, pain
10 medicine, and other measures required for comfort;

11 (2) The written document containing the certification
12 shall be signed by the [~~patient~~] individual or [~~7~~
13 ~~consistent with chapter 327E,~~] the [~~person's guardian,~~
14 ~~agent, or~~] individual's surrogate, and by any two
15 other adult persons who personally know the [~~patient,~~]
16 individual; and

17 (3) The original or copy of the document, which may be in
18 an electronic form, containing the certification and
19 all three signatures shall be maintained by the
20 [~~patient,~~] individual, and if applicable, the
21 [~~patient's,~~] individual's:



1 (A) [~~Physician,~~] Responsible health care
2 professional;

3 (B) Attorney;

4 [~~(C)~~ ~~Guardian,~~

5 ~~(D)~~] (C) Surrogate; or

6 [~~(E)~~] (D) Any other person who may lawfully act on the
7 [~~patient's~~] individual's behalf.

8 [~~Two copies of the document shall be given to the~~
9 ~~patient, or the patient's guardian, agent, or~~
10 ~~surrogate.~~]

11 (b) The rules shall provide for the following:

12 (1) The [~~patient,~~] individual, or the [~~patient's guardian,~~
13 ~~agent, or~~] individual's surrogate, may verbally revoke
14 the "comfort care only" document at any time,
15 including during the emergency situation;

16 (2) An anonymous tracking system shall be developed to
17 assess the success or failure of the procedures and to
18 ensure that abuse is not occurring; and

19 (3) If an emergency medical services [~~person,~~] personnel,
20 first responder[~~,~~] personnel, or any other [~~health~~
21 ~~care provider~~] health care professional believes in



1 good faith that the [~~provider's~~] professional's
2 safety, the safety of the family or immediate
3 bystanders, or the [~~provider's~~] professional's own
4 conscience requires the [~~patient~~] individual be
5 resuscitated despite the presence of a "comfort care
6 only" document, then that [~~provider~~] professional may
7 attempt to resuscitate that [~~patient,~~] individual, and
8 neither the [~~provider, the ambulance service,~~
9 professional, the emergency medical services, nor any
10 other person or entity shall be liable for attempting
11 to resuscitate the [~~patient~~] individual against the
12 [~~patient's will.~~] individual's certification.

13 (c) As used in this section:

14 "Emergency medical services personnel" has the same meaning
15 as defined in section 321-222.

16 "First responder personnel" has the same meaning as in
17 defined section 321-222.

18 "Health care professional" has the same meaning as in
19 defined section -2.

20 "Responsible health care professional" has the same meaning
21 as defined in section -2.



1 "Surrogate" has the same meaning as defined in
2 section -2."

3 SECTION 4. Section 323G-3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~[§]323G-3[§]~~ **Noninterference with existing health care**
6 **directives.** Nothing in this chapter shall be construed to
7 interfere with the rights of an agent operating under a valid
8 ~~[health care]~~ advance health care directive under
9 ~~[section 327E-3]~~ chapter or confer upon the caregiver any
10 authority to make health care decisions on behalf of the patient
11 unless the caregiver is designated as an agent in ~~[a health~~
12 ~~care]~~ an advance health care directive under ~~[section 327E-3.]~~
13 chapter ."

14 SECTION 5. Section 327-21, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) As used in this section:
17 "Advance ~~[health care]~~ health care directive" ~~[means a~~
18 ~~record signed or authorized by a prospective donor containing~~
19 ~~the prospective donor's direction concerning a health care~~
20 ~~decision for the prospective donor or a power of attorney for~~
21 ~~health care.]~~ has the same meaning as defined in section -2.



1 "Declaration" means a record signed by a prospective donor
2 specifying the circumstances under which a life support system
3 may be withheld or withdrawn.

4 [~~"Health-care"~~] "Health care decision" means any decision
5 regarding the health care of the prospective donor."

6 SECTION 6. Section 432E-4, Hawaii Revised Statutes, is
7 amended by amending subsection (c) to read as follows:

8 "(c) The provider shall discuss with the enrollee and the
9 enrollee's immediate family both [~~+~~]advance[~~+~~ ~~health-care~~]
10 health care directives, as provided for in chapter [~~327E, and~~
11 ~~durable powers of attorney in relation to medical treatment~~]."

12 SECTION 7. Section 560:5-304, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) The petition shall set forth the petitioner's name,
15 residence, current address if different, relationship to the
16 respondent, and interest in the appointment and, to the extent
17 known, state or contain the following with respect to the
18 respondent and the relief requested:

19 (1) The respondent's name, age, principal residence,

20 current street address, and, if different, the address



1 of the dwelling in which it is proposed that the
2 respondent will reside if the appointment is made;

3 (2) The name and address of the respondent's:

4 (A) Spouse or reciprocal beneficiary, or if the
5 respondent has none, an adult with whom the
6 respondent has resided for more than six months
7 before the filing of the petition; and

8 (B) Adult children or, if the respondent has none,
9 the respondent's parents and adult siblings, or
10 if the respondent has none, at least one of the
11 adults nearest in kinship to the respondent who
12 can be found;

13 (3) The name and address of any person responsible for
14 care or custody of the respondent;

15 (4) The name and address of any legal representative of
16 the respondent;

17 (5) The name and address of any person nominated as
18 guardian by the respondent[+], including, if
19 applicable, the nomination made in the respondent's
20 advance health care directive under
21 section -7(a)(4);



1 (6) The name and address of any agent appointed by the
2 respondent under any ~~[medical]~~ advance health care
3 directive ~~[, mental health care directive, or health~~
4 ~~care power of attorney,]~~ under section -8 or, if
5 none, any ~~[designated]~~ default surrogate under section
6 ~~[327E-5(f);]~~ -12;

7 (7) The name and address of any proposed guardian and the
8 reason why the proposed guardian should be selected;

9 (8) The reason why guardianship is necessary, including a
10 brief description of the nature and extent of the
11 respondent's alleged incapacity;

12 (9) If an unlimited guardianship is requested, the reason
13 why limited guardianship is inappropriate and, if a
14 limited guardianship is requested, the powers to be
15 granted to the limited guardian; and

16 (10) A general statement of the respondent's property with
17 an estimate of its value, including any insurance or
18 pension, and the source and amount of any other
19 anticipated income or receipts."

20 SECTION 8. Section 560:5-310, Hawaii Revised Statutes, is
21 amended as follows:



1 1. By amending subsection (a) to read:

2 "(a) Subject to subsection (c), the court in appointing a
3 guardian shall consider persons otherwise qualified in the
4 following order of priority:

5 (1) A guardian, other than a temporary or emergency
6 guardian, currently acting for the respondent in this
7 State or elsewhere;

8 (2) A person nominated as guardian by the respondent,
9 including the respondent's most recent nomination made
10 in a durable power of attorney[7] or advance health
11 care directive if at the time of the nomination the
12 respondent had sufficient capacity to express a
13 preference;

14 (3) An agent appointed by the respondent under any
15 [~~medical~~] advance health care directive or health care
16 power of attorney or, if none, any [~~designated~~]
17 default surrogate under section [~~327E-5(f);~~] -12;

18 (4) The spouse or reciprocal beneficiary of the respondent
19 or a person nominated by will or other signed writing
20 of a deceased spouse or reciprocal beneficiary;

21 (5) An adult child of the respondent;



- 1 (6) A parent of the respondent, or an individual nominated
2 by will or other signed writing of a parent; and
3 (7) An adult with whom the respondent has resided for more
4 than six months before the filing of the petition."

5 2. By amending subsection (c) to read:

6 "(c) An owner, operator, ~~[or]~~ employee, or contractor of a
7 long-term care institution or other care settings at which the
8 respondent is ~~[residing or]~~ receiving care may not be appointed
9 as guardian unless ~~[related to the respondent by blood,~~
10 ~~marriage, or adoption,]~~ the owner, operator, employee, or
11 contractor is a family member of the respondent, the cohabitant
12 of the respondent or a family member of the cohabitant, or
13 otherwise ordered by the court. As used in this subsection,
14 "cohabitant" and "family member" have the same meanings as
15 defined in section -2."

16 SECTION 9. Section 560:5-316, Hawaii Revised Statutes, is
17 amended by amending subsections (c) and (d) to read as follows:

18 "(c) A guardian, without authorization of the court, shall
19 not:

- 20 (1) Revoke any ~~[health care directions]~~ health care
21 instructions set forth in any ~~[medical]~~ advance health



1 care directive or health care power of attorney of
2 which the ward is the principal; [~~provided that the~~
3 ~~appointment of a guardian shall automatically~~
4 ~~terminate the authority of any agent designated in the~~
5 ~~medical directive or health care power of attorney;~~]

6 or

7 (2) Restrict the personal communication rights of the
8 ward, including the right to receive visitors,
9 telephone calls, and personal mail, unless deemed by
10 the guardian to pose a risk to the safety or
11 well-being of the ward.

12 (d) A guardian shall not initiate the commitment of a ward
13 to a mental [~~health care~~] health care institution except in
14 accordance with the ward's advance health care directive or the
15 State's procedure for involuntary civil commitment."

16 SECTION 10. Section 671-3, Hawaii Revised Statutes, is
17 amended by amending subsection (e) to read as follows:

18 "(e) For purposes of this section, "legal surrogate" means
19 [~~an agent designated in a power of attorney for health care or~~
20 ~~surrogate designated or selected in accordance with chapter~~



1 ~~327E.] an agent or default surrogate, as defined in~~
2 section -2."

3 SECTION 11. Chapter 327E, Hawaii Revised Statutes, is
4 repealed.

5 SECTION 12. Chapter 327G, Hawaii Revised Statutes, is
6 repealed.

7 SECTION 13. If any provision of this Act or the
8 application thereof to any person or circumstances is held
9 invalid, the invalidity does not affect other provisions or
10 applications of the Act that can be given effect without the
11 invalid provision or application, and to this end the provisions
12 of this Act are severable.

13 SECTION 14. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 15. This Act shall take effect on December 31,
16 2050.



Report Title:

Uniform Health-Care Decisions Act; Advance Health care Directives; Advance Mental Health care Directives

Description:

Adopts the Uniform Health-Care Decisions Act (2023) with amendments to replace chapters 327E and 327G, HRS. Effective 12/31/2050. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

