

# S.B. NO. 1323

JAN 23 2025

## A BILL FOR AN ACT

RELATING TO HEALTH CARE.

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

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

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

17       Among other things, the Uniform Health-Care Decisions Act  
18 (2023) expands upon the framework for determining whether an

# S.B. NO. 1323

1 individual has capacity, removes legal hurdles for creating  
2 advance directives, addresses both advance health-care  
3 directives and advance mental health-care directives within the  
4 same statutory framework, and allows an individual to assent to  
5 a "Ulysses clause" in an advance mental health-care directive,  
6 which allows an individual to include an instruction that  
7 prevents the individual from revoking the advance directive if  
8 the individual is experiencing a psychiatric or psychological  
9 event specified in the directive.

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

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

## "CHAPTER

### HEALTH-CARE DECISIONS

19 § -1 Short title. This chapter may be cited as the  
20 Uniform Health-Care Decisions Act (modified).

21 § -2 Definitions. As used in this chapter, unless the  
22 context clearly requires otherwise:

# S.B. NO. 1323

1 "Advance health-care directive" means a power of attorney  
2 for health care, health-care instruction, or both. The term  
3 includes an advance mental health-care directive.

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

7 "Advanced practice registered nurse" means a registered  
8 nurse licensed to practice in this State who:

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

10 (2) Because of advanced education and specialized clinical  
11 training, is authorized to assess, screen, diagnose,  
12 order, utilize, or perform medical, therapeutic,  
13 preventive, or corrective measures; and

14 (3) Holds an accredited national certification in an  
15 advanced practice registered nurse psychiatric mental-  
16 health specialization.

17 "Agent" means an individual appointed under a power of  
18 attorney for health care to make a health-care decision for the  
19 individual who made the appointment. The term includes a co-  
20 agent or alternate agent appointed under section -20.

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

# S.B. NO. 1323

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

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

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

10 "Electronic" means relating to technology having  
11 electrical, digital, magnetic, wireless, optical,  
12 electromagnetic, or similar capabilities.

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

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

17 "Family member" means a spouse, civil union partner, adult  
18 child, parent, or grandparent, or an adult child of a spouse,  
19 civil union partner, child, parent, or grandparent.

20 "First responder personnel" has the same meaning as in  
21 section 321-222.

# S.B. NO. 1323

1 "Guardian" means a person appointed under chapter 560,  
2 article v, part 3, by a court to make decisions regarding the  
3 personal affairs of an individual, which may include health-care  
4 decisions. The term does not include a guardian ad litem.

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

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

- 12 (1) Selection or discharge of a health-care professional  
13 or health-care institution;
- 14 (2) Approval or disapproval of a diagnostic test, surgical  
15 procedure, medication, therapeutic intervention, or  
16 other health care; and
- 17 (3) Direction to provide, withhold, or withdraw artificial  
18 nutrition or hydration, mechanical ventilation, or  
19 other health care.

20 "Health-care institution" means a facility or agency  
21 licensed, certified, or otherwise authorized or permitted by

# S.B. NO. 1323

1 other law to provide health care in this State in the ordinary  
2 course of business.

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

9 "Health-care professional" means a physician or other  
10 individual licensed, certified, or otherwise authorized or  
11 permitted by other law of this State to provide health care in  
12 this State in the ordinary course of business or the practice of  
13 the physician's or individual's profession.

14 "Individual" means an adult or emancipated minor.

15 "Mental health care" means care or treatment or a service  
16 or procedure to maintain, monitor, diagnose, or otherwise affect  
17 an individual's mental illness or other psychiatric,  
18 psychological, or psychosocial condition.

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

20 "Nursing home" means a nursing facility as defined in  
21 section 1919(a)(1) of the Social Security Act, title 42 U.S.C.  
22 section 1396r(a)(1), or skilled nursing facility as defined in

# S.B. NO. 1323

1 section 1819(a)(1) of the Social Security Act, title 42 U.S.C.

2 section 1395i-3(a)(1).

3 "Person" means an individual, estate, business or nonprofit  
4 entity, government or governmental subdivision, agency, or  
5 instrumentality, or other legal entity.

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

7 (1) The individual's surrogate;

8 (2) A family member of the individual;

9 (3) The cohabitant of the individual;

10 (4) A public entity providing health-care case management  
11 or protective services to the individual;

12 (5) A person appointed under other law to make decisions  
13 for the individual under a power of attorney for  
14 finances; or

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

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

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

# S.B. NO. 1323

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

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

12 "Record" means information:

- 13 (1) Inscribed on a tangible medium; or  
14 (2) Stored in an electronic or other medium and  
15 retrievable in perceivable form.

16 "Responsible health-care professional" means:

- 17 (1) A health-care professional designated by an individual  
18 or the individual's surrogate to have primary  
19 responsibility for the individual's health care or for  
20 overseeing a course of treatment; or  
21 (2) In the absence of a designation under paragraph (1)  
22 or, if the professional designated under paragraph (1)

# S.B. NO. 1323

1           is not reasonably available, a health-care  
2           professional who has primary responsibility for  
3           overseeing the individual's health care or for  
4           overseeing a course of treatment.

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

- 7           (1)   Execute or adopt a tangible symbol; or  
8           (2)   Attach to or logically associate with the record an  
9           electronic symbol, sound, or process.

10          "State" means a state of the United States, the District of  
11   Columbia, Puerto Rico, the United States Virgin Islands, or any  
12   other territory or possession subject to the jurisdiction of the  
13   United States. The term includes a federally recognized Indian  
14   tribe.

15          "Supported decision making" means assistance, from one or  
16   more persons of an individual's choosing, that helps the  
17   individual make or communicate a decision, including by helping  
18   the individual understand the nature and consequences of the  
19   decision.

20          "Surrogate" means:

- 21          (1)   An agent;  
22          (2)   A default surrogate; or

# S.B. NO. 1323

(3) A guardian authorized to make health-care decisions.

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

(1) Is willing and able to communicate a decision independently or with appropriate services, technological assistance, supported decision making, or other reasonable accommodation; and

(2) In making or revoking:

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

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

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

# S.B. NO. 1323

1                   appointment or identification with the person  
2                   being appointed or identified.

3           (b)   The right of an individual who has capacity to make a  
4 decision about the individual's health care shall not be  
5 affected by whether the individual creates or revokes an advance  
6 health-care directive.

7           **§   -4   Presumption of capacity; overcoming presumption.**

8   (a)   An individual shall be presumed to have capacity to make or  
9 revoke a health-care decision, health-care instruction, and  
10 power of attorney for health care unless:

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

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

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

17       (1)   Subject to subsection (c), made on the basis of a  
18 contemporaneous examination by any of the following  
19 health-care professionals:

20           (A)   A physician;

21           (B)   A psychologist; or

22           (C)   An advanced practice registered nurse;

# S.B. NO. 1323

1           (2) Made in accordance with accepted standards of the  
2           profession and the scope of practice of the health-  
3           care professional making the finding and to a  
4           reasonable degree of certainty; and

5           (3) Documented in a record signed by the health-care  
6           professional making the finding that includes an  
7           opinion of the cause, nature, extent, and probable  
8           duration of the lack of capacity.

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

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

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

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

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

# S.B. NO. 1323

1           §   -5   Notice of finding of lack of capacity; right to  
2   object.   (a)   As soon as reasonably feasible, a health-care  
3   professional who makes a finding under section       -4(b) shall  
4   inform the individual about whom the finding was made or the  
5   individual's responsible health-care professional of the  
6   finding.

7           (b)   As soon as reasonably feasible, a responsible health-  
8   care professional who is informed of a finding under section  
9   -4(b) shall inform the individual about whom the finding was  
10   made and the individual's surrogate.

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

13          (1)   By orally informing a responsible health-care  
14                professional;

15          (2)   In a record provided to a responsible health-care  
16                professional or the health-care institution in which  
17                the individual resides or is receiving care; or

18          (3)   By another act that clearly indicates the individual's  
19                objection.

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

22          (1)   The individual withdraws the objection;

S.B. NO. 1323

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

(3) The individual is experiencing a health condition requiring a decision regarding health-care treatment to be made promptly to avoid imminent loss of life or 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.

# S.B. NO. 1323

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

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

6           (2) Document the objection and the date of the objection  
7 in the individual's medical record or communicate the  
8 objection and the date of the objection to an  
9 administrator with responsibility for medical records  
10 of the health-care institution providing health care  
11 to the individual, who shall document the objection  
12 and the date of the objection in the individual's  
13 medical record.

14           **§ -6 Judicial review of finding of lack of capacity.**

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

21           (b) The court in which a petition under subsection (a) is  
22 filed may appoint a guardian ad litem. The court shall hear the

## S.B. NO. 1323

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 clear and convincing evidence that the individual lacks capacity.

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

- (1) Health-care professionals or health-care institutions;
- (2) How a health-care decision will be made and communicated;
- (3) Persons that should or should not be consulted regarding a health-care decision;
- (4) A person to serve as guardian for the individual if one is appointed; and
- (5) An individual to serve as a default surrogate.

(b) A health-care professional to whom an individual communicates or provides an instruction under subsection (a) shall document and maintain the instruction and the date of the instruction in the individual's medical record or communicate

# S.B. NO. 1323

1 the instruction and date of the instruction to an administrator  
2 with responsibility for medical records of the health-care  
3 institution providing health care to the individual, who shall  
4 document and maintain the instruction and the date of the  
5 instruction in the individual's medical record.

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

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

13 **§ -8 Power of attorney for health care.** (a) An  
14 individual may create a power of attorney for health care to  
15 appoint an agent to make health-care decisions for the  
16 individual.

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

20 (1) A court finds that the potential agent poses a danger  
21 to the individual's well-being, even if the court does

S.B. NO. 1323

1 not issue a restraining order or injunction against  
2 the potential agent; or

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

10 (c) A health-care decision made by an agent shall be  
11 effective without judicial approval.

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

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

17 (2) Is not:

18 (A) The agent appointed by the individual;

19 (B) The agent's spouse, civil union partner, or  
20 cohabitant;

21 (C) If the individual resides or is receiving care in  
22 a nursing home or other residential care

# S.B. NO. 1323

1 facility, the owner, operator, employee, or  
2 contractor of the nursing home or other  
3 residential care facility; and

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

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

9 (1) Physically present in the same location;

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

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

17 (A) The identity of the individual is personally  
18 known to the witness; or

19 (B) The witness is able to authenticate the identity  
20 of the individual by receiving accurate answers  
21 from the individual that enable the  
22 authentication.

# S.B. NO. 1323

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

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

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

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

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

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

(B) Admission to a mental health-care facility, including duration of admission;

(C) Preferences regarding medications;

(D) Refusal to accept a specific type of mental health care, including medication; and

(E) Preferences regarding crisis intervention.

# S.B. NO. 1323

1           (c) A power of attorney for health care under this section  
2 may appoint an agent to make decisions only for mental health  
3 care.

4           (d) An individual may direct in an advance mental health-  
5 care directive that, if the individual is experiencing a  
6 psychiatric or psychological event specified in the directive,  
7 the individual may not revoke the directive or a part of the  
8 directive.

9           (e) If an advance mental health-care directive includes a  
10 direction under subsection (d), the advance mental health-care  
11 shall be signed by the individual creating the advance mental  
12 health-care directive and at least two adult witnesses who:

13           (1) Attest that to the best of their knowledge the  
14 individual:

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

17               (B) Made the direction voluntarily and without  
18 coercion or undue influence;

19           (2) Are not:

20               (A) The agent appointed by the individual;

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

S.B. NO. 1323

1           (C) If the individual resides in a nursing home or  
2           other residential care facility the owner,  
3           operator, employee, or contractor of the nursing  
4           home or other residential care facility; and

5           (3) Are physically present in the same location as the  
6           individual.

7           §   -10 Relationship of advance mental health-care  
8   directive and other advance health-care directive. (a) If a  
9   direction in an advance mental health-care directive of an  
10   individual conflicts with a direction in another advance health-  
11   care directive of the individual, the later direction shall  
12   revoke the earlier direction to the extent of the conflict.

13           (b) An appointment of an agent to make decisions only for  
14   mental health care for an individual shall not revoke an earlier  
15   appointment of an agent to make other health-care decisions for  
16   the individual.

17           (c) An appointment of an agent to make decisions only for  
18   mental health care decisions for an individual shall revoke an  
19   earlier appointment of an agent to make mental health care  
20   decisions for the individual unless otherwise specified in the  
21   later appointment.

## S.B. NO. 1323

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

**§ -11 Model forms.** The department of health, in consultation with the department of the attorney general, shall develop, publish, and update as appropriate model forms of advance health-care directives and advance mental health-care directives, which shall be posted on the department of health's website.

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

(b) Upon determination that an individual lacks capacity to make health-care decisions, a responsible health-care professional or the responsible health-care professional's designee shall make reasonable efforts to notify the individual of the individual's lack of capacity to make health-care decisions. If the individual has not appointed an agent and the individual retains capacity under section -3(a)(1) and

## S.B. NO. 1323

1 (2)(C), the individual may identify a person to act as a default  
2 surrogate.

3 (c) Unless the individual has an advance health-care  
4 directive that indicates otherwise or the person identified by  
5 the individual under subsection (b) is designated as a default  
6 surrogate, the responsible health-care professional or the  
7 responsible health-care professional's designee shall make  
8 reasonable efforts to locate as many interested persons as  
9 practicable, and the responsible health-care professional or the  
10 responsible health-care professional's designee may rely on the  
11 interested persons to notify other family members or interested  
12 persons. Upon locating interested persons, the responsible  
13 health-care professional or the responsible health-care  
14 professional's designee shall inform the interested persons of  
15 the individual's lack of capacity and that a default surrogate  
16 should be selected for the individual.

17 (d) Interested persons shall make reasonable efforts to  
18 reach a consensus as to who among them shall act as the  
19 individual's default surrogate. If the person selected to act  
20 as the individual's default surrogate is disqualified or becomes  
21 disqualified under section -13, the interested persons shall

## S.B. NO. 1323

1 make reasonable efforts to reach consensus as to who among them  
2 shall act as the individual's default surrogate.

3       The person selected to act as the individual's default  
4 surrogate shall be the person who has a close relationship with  
5 the individual and who is the most likely to be currently  
6 informed of the individual's wishes regarding health-care  
7 decisions.

8       (e) If any of the interested persons disagrees with the  
9 selection of the default surrogate or the health-care decision  
10 by the default surrogate, or, if after reasonable efforts the  
11 interested persons are unable to reach a consensus as to who  
12 should act as the default surrogate, any of the interested  
13 persons may seek guardianship of the individual by initiating  
14 guardianship proceedings pursuant to chapter 551 or chapter 560,  
15 as applicable. Only interested persons involved in the  
16 discussions to choose a default surrogate may initiate such  
17 proceedings with regard to the individual.

18       (f) A responsible health-care professional may require a  
19 person who assumes authority to act as a default surrogate to  
20 provide a signed declaration in a record under penalty of law  
21 stating facts and circumstances reasonably sufficient to

## S.B. NO. 1323

1 establish the authority. The signed declaration shall include  
2 the following:

- 3 (1) The name of the person who seeks to assume the  
4 authority to act as a default surrogate;
- 5 (2) An affirmation that the person understands that the  
6 statements and affirmations are made under the penalty  
7 of law;
- 8 (3) An affirmation that the person had a relationship with  
9 the individual who lacks capacity prior to the  
10 individual becoming incapacitated;
- 11 (4) A statement defining that relationship, including  
12 identifying the relationship of the person to the  
13 individual;
- 14 (5) If the person is not a family member or cohabitant, a  
15 statement describing how the person exhibited special  
16 care and concern for the individual who lacks capacity  
17 and is familiar with the individual's personal values;  
18 and
- 19 (6) Affirmation that the person understands that the  
20 health-care professional will reasonably rely on the  
21 person's representations in the declaration to assist  
22 in providing medical treatment.

# S.B. NO. 1323

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

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

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

**§ -13 Disqualification to act as default surrogate. (a)**  
An individual for whom a health-care decision would be made may disqualify a person from acting as default surrogate for the individual by expressing the wish to disqualify that person. The disqualification shall be in a record signed by the individual or communicated verbally or nonverbally by the individual to the person being disqualified, another person, or a responsible health-care professional. If the individual has expressed that the individual did not want a particular person

## S.B. NO. 1323

1 to make health-care decisions for the individual, that person  
2 shall be disqualified from being a default surrogate.  
3 Disqualification under this subsection shall be effective even  
4 if made by an individual who is found under section -4(b) or  
5 by a court to lack capacity to make a health-care decision if  
6 the individual clearly communicates a desire that the person  
7 being disqualified not make health-care decisions for the  
8 individual.

9 (b) A person shall be disqualified from acting as a  
10 default surrogate for an individual who lacks capacity to make  
11 health-care decisions if:

- 12 (1) A court finds that the potential default surrogate  
13 poses a danger to the individual's well-being, even if  
14 the court does not issue a restraining order or  
15 injunction against the potential surrogate;
- 16 (2) The potential default surrogate is an owner, operator,  
17 employee, or contractor of a nursing home or other  
18 residential care facility in which the individual is  
19 residing or receiving care unless the owner, operator,  
20 employee, or contractor is a family member of the  
21 individual, the cohabitant of the individual, or a  
22 family member of the cohabitant;

# S.B. NO. 1323

(3) The potential default surrogate refuses to provide a timely declaration under section -12(f) upon the 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.

## S.B. NO. 1323

1       §   -14   Revocation.   (a)   An individual may revoke the  
2   appointment of an agent, the designation of a default surrogate,  
3   or a health-care instruction in whole or in part, unless:

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

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

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

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

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

## S.B. NO. 1323

(d) Unless otherwise provided in an individual's advance health-care directive appointing an agent, the appointment of a spouse or civil union partner of an individual as agent for the individual shall be revoked if:

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

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

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

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

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

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

## S.B. NO. 1323

(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 revocation of an advance health-care directive, this chapter shall prevail.

S.B. NO. 1323

1           §   -17   Duties of agent and default surrogate.   (a)   An  
2   agent or default surrogate shall have a fiduciary duty to the  
3   individual for whom the agent or default surrogate is acting  
4   when exercising or purporting to exercise a power under section  
5   -18.

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

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

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

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

S.B. NO. 1323

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

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

# S.B. NO. 1323

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

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

10          (c) A power of attorney for health care may provide that  
11          the power of an agent under subsection (b) commences on  
12          appointment.

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

19          A default surrogate may act as a medicaid authorized  
20          representative, pursuant to federal and state medicaid laws  
21          relating to authorized representatives, on the individual's  
22          behalf for the purposes of medicaid, including assisting with,

# S.B. NO. 1323

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

13 The agent of default surrogate's status as an authorized  
14 representative for the purposes of medicaid shall terminate when  
15 revoked by an individual who no longer lacks capacity, upon  
16 appointment or availability of another agent or guardian, or  
17 upon the individual's death.

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

S.B. NO. 1323

1           (1) Voluntary admission is specifically authorized by the  
2                   individual in an advance health-care directive in a  
3                   record; and

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

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

13           (1) An alternative living arrangement is reasonably  
14                   feasible;

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

16           (3) The individual is not terminally ill.

17           Nothing in this subsection shall prevent an agent or  
18 default surrogate from consenting to placement of the individual  
19 in a nursing home for more than one hundred days if the  
20 individual specifically authorizes the agent or default  
21 surrogate to do so in an advance health-care directive in a  
22 record.

S.B. NO. 1323

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

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

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

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

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

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

S.B. NO. 1323

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

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

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

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

(b) An individual in a power of attorney for health care may appoint one or more individuals to act as alternate agents if a predecessor agent withdraws, dies, becomes disqualified, is not reasonably available, or otherwise is unwilling or unable to act as agent.

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

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

## S.B. NO. 1323

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

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

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

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

(1) Document the finding or circumstance in the individual's medical record; and

S.B. NO. 1323

1           (2) If possible, communicate to the individual and the  
2           individual's surrogate the finding or circumstance and  
3           that the individual may object under section     -5(c)  
4           to the finding under section     -4(b).

5           (d) A responsible health-care professional who is informed  
6           that an individual has created or revoked an advance health-care  
7           directive, or that a surrogate for an individual has been  
8           appointed, designated, or disqualified, or has withdrawn, shall:

9           (1) Document the information as soon as reasonably  
10          feasible in the individual's medical record; and

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

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

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

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

S.B. NO. 1323

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

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

9           (1) The instruction or decision is contrary to a policy of  
10          the health-care institution providing care to the  
11          individual and the policy was timely communicated to  
12          the individual with capacity or to the individual's  
13          surrogate;

14          (2) The care would require health care that is not  
15          available to the professional or institution; or

16          (3) Compliance with the instruction or decision would:

17               (A) Require the professional to provide care that is  
18               contrary to the professional's religious belief  
19               or moral conviction and if other law permits the  
20               professional to refuse to provide care for that  
21               reason;

S.B. NO. 1323

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

(C) Violate a court order or other law.

(g) A health-care professional or health-care institution that refuses to provide care under subsection (f) shall:

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

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

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

# S.B. NO. 1323

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

**§ -23 Immunity.** (a) A health-care professional or health-care institution acting in good faith shall not be subject to civil or criminal liability or to discipline for unprofessional conduct for:

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

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

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

(4) Refusing to comply with an advance health-care directive based on a reasonable belief that the directive is not valid, including a reasonable belief

## S.B. NO. 1323

1           that the directive was not made by the individual or,  
2           after its creation, was substantively altered by a  
3           person other than the individual who created it;

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

7           (6) Complying with an individual's direction under section  
8           -9(d).

9           (b) An agent, default surrogate, or person with a  
10          reasonable belief that the person is an agent or a default  
11          surrogate shall not be subject to civil or criminal liability or  
12          to discipline for unprofessional conduct for a health-care  
13          decision made in a good faith effort to comply with section -  
14          17.

15          §   -24   **Prohibited conduct; damages.**   (a) A person shall  
16          not:

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

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

# S.B. NO. 1323

(A) Intentionally conceal, deface, obliterate, or delete the directive or a revocation of the directive without consent of the individual who created or revoked the directive; or

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

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

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

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

# S.B. NO. 1323

1           (c) Subject to subsection (d), an individual who makes a  
2 health-care instruction, or the individual's estate, has a cause  
3 of action against a health-care professional or health-care  
4 institution that intentionally violates section       -21 for  
5 statutory damages of \$50,000 or actual damages resulting from  
6 the violation, whichever is greater.

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

- 11           (1) The violation occurs in the course of providing care  
12               to an individual experiencing a health condition for  
13               which the professional reasonably believes the care is  
14               appropriate to avoid imminent loss of life or serious  
15               harm to the individual or providing care;
- 16           (2) The failure to comply is consistent with accepted  
17               standards of the profession of the professional; and
- 18           (3) The provision of care does not begin in a health-care  
19               institution in which the individual resides or was  
20               receiving care.

## S.B. NO. 1323

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

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

6           **§ -25 Effect of copy; certified physical copy.** (a) A  
7 physical or electronic copy of an advance health-care directive,  
8 revocation of an advance health-care directive, or appointment,  
9 designation, or disqualification of a surrogate shall have the  
10 same effect as the original.

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

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

21           (1) Enjoin implementation of a health-care decision made  
22 by an agent or default surrogate on behalf of the

# S.B. NO. 1323

1 individual, on a finding that the decision is

2 inconsistent with section -17 or -18;

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

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

8 (B) Is unwilling or unable to comply with section  
9 -17; or

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

11 (3) Enjoin another person from acting as a default  
12 surrogate, on a finding that the other person acting  
13 as a default surrogate did not comply with section  
14 -12 or the other person:

15 (A) Is disqualified under section -13;

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

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

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

S.B. NO. 1323

1 (A) By and for the individual; or

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

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

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

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

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

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

## S.B. NO. 1323

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 law of this State, excluding the State's choice-of-  
12 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.

# S.B. NO. 1323

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

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

8 § -30 Transitional provision. This chapter applies to  
9 an advance health-care directive created before, on, or after  
10 January 1, 2026."

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

13 "§321-23.6 Rapid identification documents. (a) The  
14 department shall adopt rules for emergency medical services that  
15 shall include:

16 (1) Uniform methods of rapidly identifying an ~~[adult~~  
17 ~~person,~~] individual who is an adult or emancipated  
18 minor, who has certified, or for whom has been  
19 certified, in a written "comfort care only" document  
20 that the ~~[person]~~ individual or, consistent with  
21 chapter ~~[327E,~~ \_\_\_\_\_, the ~~[person's guardian, agent,~~  
22 ~~ex]~~ individual's surrogate directs emergency medical

# S.B. NO. 1323

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

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

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

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

# S.B. NO. 1323

(B) Attorney;

~~[(C) Guardian;~~

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

~~[(E)]~~ (D) Any other person who may lawfully act on the

~~[patient's]~~ individual's behalf.

~~[Two copies of the document shall be given to the~~

~~patient, or the patient's guardian, agent, or~~

~~surrogate.]~~

(b) The rules shall provide for the following:

(1) The ~~[patient,~~ individual, or the ~~[patient's guardian,~~  
~~agent, or]~~ individual's surrogate, may verbally revoke  
the "comfort care only" document at any time,

including during the emergency situation;

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

(3) If an emergency medical services ~~[person,~~ personnel,  
first responder~~]~~ personnel, or any other ~~[health~~  
~~care provider]~~ health-care professional believes in  
good faith that the ~~[provider's]~~ professional's  
safety, the safety of the family or immediate  
bystanders, or the ~~[provider's]~~ professional's own

S.B. NO. 1323

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

10 (c) As used in this section, unless the context clearly  
11 requires otherwise:

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

14 "First responder personnel" has the same meaning as in  
15 section 321-222.

16 "Health-care professional" has the same meaning as in  
17 section -2.

18 "Responsible health-care professional" has the same meaning  
19 as in section -2.

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

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

S.B. NO. 1323

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

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

12       "(b) As used in this section:

13       "Advance health-care directive" ~~[means a record signed or~~  
14 ~~authorized by a prospective donor containing the prospective~~  
15 ~~donor's direction concerning a health care decision for the~~  
16 ~~prospective donor or a power of attorney for health care.]~~ has  
17 the same meaning as in section       -2.

18       "Declaration" means a record signed by a prospective donor  
19 specifying the circumstances under which a life support system  
20 may be withheld or withdrawn.

21       "Health-care decision" means any decision regarding the  
22 health care of the prospective donor."

## S.B. NO. 1323

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

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

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

9       "(b) The petition shall set forth the petitioner's name,  
10 residence, current address if different, relationship to the  
11 respondent, and interest in the appointment and, to the extent  
12 known, state or contain the following with respect to the  
13 respondent and the relief requested:

14       (1) The respondent's name, age, principal residence,  
15 current street address, and, if different, the address  
16 of the dwelling in which it is proposed that the  
17 respondent will reside if the appointment is made;

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

19           (A) Spouse or reciprocal beneficiary, or if the  
20 respondent has none, an adult with whom the  
21 respondent has resided for more than six months  
22 before the filing of the petition; and

## S.B. NO. 1323

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

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

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

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

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

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

# S.B. NO. 1323

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

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

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

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

1. By amending subsection (a) to read:

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

- (1) A guardian, other than a temporary or emergency guardian, currently acting for the respondent in this State or elsewhere;
- (2) A person nominated as guardian by the respondent, including the respondent's most recent nomination made

## S.B. NO. 1323

1 in a durable power of attorney~~[7]~~ or advance health-  
2 care directive if at the time of the nomination the  
3 respondent had sufficient capacity to express a  
4 preference;

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

9 (4) The spouse or reciprocal beneficiary of the respondent  
10 or a person nominated by will or other signed writing  
11 of a deceased spouse or reciprocal beneficiary;

12 (5) An adult child of the respondent;

13 (6) A parent of the respondent, or an individual nominated  
14 by will or other signed writing of a parent; and

15 (7) An adult with whom the respondent has resided for more  
16 than six months before the filing of the petition."

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

18 "(c) An owner, operator, ~~[or]~~ employee, or contractor of a  
19 long-term care institution or other care settings at which the  
20 respondent is ~~[residing or]~~ receiving care may not be appointed  
21 as guardian unless ~~[related to the respondent by blood,~~  
22 ~~marriage, or adoption,]~~ the owner, operator, employee, or

## S.B. NO. 1323

1 contractor is a family member of the respondent, the cohabitant  
2 of the respondent or a family member of the cohabitant, or  
3 otherwise ordered by the court. As used in this subsection,  
4 "cohabitant" and "family member" have the same meanings as in  
5 section -2."

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

8 "(c) A guardian, without authorization of the court, shall  
9 not:

- 10 (1) Revoke any [~~health care directions~~] health-care  
11 instructions set forth in any [~~medical~~] advance  
12 health-care directive or health care power of attorney  
13 of which the ward is the principal; [~~provided that the~~  
14 ~~appointment of a guardian shall automatically~~  
15 ~~terminate the authority of any agent designated in the~~  
16 ~~medical directive or health care power of attorney;~~]  
17 or
- 18 (2) Restrict the personal communication rights of the  
19 ward, including the right to receive visitors,  
20 telephone calls, and personal mail, unless deemed by  
21 the guardian to pose a risk to the safety or well-  
22 being of the ward.

## S.B. NO. 1323

1           (d) A guardian shall not initiate the commitment of a ward  
2 to a mental health-care institution except in accordance with  
3 the ward's advance health-care directive or the State's  
4 procedure for involuntary civil commitment."

5           SECTION 10. Section 671-3, Hawaii Revised Statutes, is  
6 amended by amending subsection (e) as follows:

7           "(e) For purposes of this section, "legal surrogate" means  
8 ~~[an agent designated in a power of attorney for health care or~~  
9 ~~surrogate designated or selected in accordance with chapter~~  
10 ~~327E.]~~ an agent or default surrogate, as defined in section -  
11 2."

12           SECTION 11. Chapter 327E, Hawaii Revised Statutes, is  
13 repealed.

14           SECTION 12. Chapter 327G, Hawaii Revised Statutes, is  
15 repealed.

16           SECTION 13. If any provision of this Act or the  
17 application thereof to any person or circumstances is held  
18 invalid, the invalidity does not affect other provisions or  
19 applications of the Act that can be given effect without the  
20 invalid provision or application, and to this end the provisions  
21 of this Act are severable.

S.B. NO. 1323

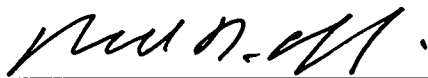
1       SECTION 14. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3       SECTION 15. This Act, upon its approval, shall take effect  
4 on January 1, 2026.

5

6

INTRODUCED BY:



7

BY REQUEST

# S.B. NO. 1323

**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 1/1/2026.

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

JUSTIFICATION SHEET

**SB. NO. 1323**

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO HEALTH CARE.

PURPOSE: To update laws concerning advance health-care directives and advance mental health-care directives by adopting the 2023 Uniform Health-Care Decisions Act in amended form.

MEANS: Add a new chapter to the Hawaii Revised Statutes (HRS). Amend sections 321-23.6, 323G-3, 327-21(b), 432E-4(c), 560:5-304(b), 560:5-310(a) and (c), 560:5-316, and 671-3, HRS. Repeal chapters 327E and 327G.

JUSTIFICATION: In 2023, the Uniform Law Commission approved and recommended for enactment in all states the Uniform Health-Care Decisions Act (2023). While existing Hawaii laws address advance directives broadly, the Uniform Health-Care Decisions Act (2023) does so more comprehensively by dividing various types of advance directives into separate sections for power of attorney for health care, health-care instructions, and advance mental health-care directives.

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

## SB. NO. 1323

Impact on the public: The bill simplifies the process to execute an advance health-care directive.

Impact on the department and other agencies: The Department of Health, in consultation with the Department, will be required to develop model forms of advance health-care directives and advance mental health-care directives.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: Judiciary; Department of Health; County  
Emergency Medical Services.

EFFECTIVE DATE: January 1, 2026.