

ACT 169

H.B. NO. 171

A Bill for an Act Relating to Health Care Decisions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
UNIFORM HEALTH-CARE DECISIONS ACT (MODIFIED)**

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

§ **-2 Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Advance health-care directive” means an individual instruction or a power of attorney for health care.

“Agent” means an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power.

“Best interest” means that the benefits to the individual resulting from a treatment outweigh the burdens to the individual resulting from that treatment and shall include:

- (1) The effect of the treatment on the physical, emotional, and cognitive functions of the patient;
- (2) The degree of physical pain or discomfort caused to the individual by the treatment or the withholding or withdrawal of the treatment;
- (3) The degree to which the individual’s medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment;
- (4) The effect of the treatment on the life expectancy of the patient;
- (5) The prognosis of the patient for recovery, with and without the treatment;
- (6) The risks, side effects, and benefits of the treatment or the withholding of treatment; and
- (7) The religious beliefs and basic values of the individual receiving treatment, to the extent that these may assist the surrogate decision-maker in determining benefits and burdens.

“Capacity” means an individual’s ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health-care decision.

“Emancipated minor” means a person under eighteen years of age who is totally self-supporting.

“Guardian” means a judicially appointed guardian or conservator having authority to make a health-care decision for an individual.

“Health care” means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual’s physical or mental condition, including:

- (1) Selection and discharge of health-care providers and institutions;
- (2) Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
- (3) Direction to provide, withhold, or withdraw artificial nutrition and hydration; provided that withholding or withdrawing artificial nutrition or hydration is in accord with generally accepted health care standards applicable to health care providers or institutions.

“Health-care decision” means a decision made by an individual or the individual’s agent, guardian, or surrogate, regarding the individual’s health care.

“Health-care institution” means an institution, facility, or agency licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business.

“Health-care provider” means an individual licensed, certified, or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession.

“Individual instruction” means an individual’s direction concerning a health-care decision for the individual.

“Interested persons” means the patient’s spouse, unless legally separated or estranged, a reciprocal beneficiary, any adult child, either parent of the patient, an adult sibling or adult grandchild of the patient, or any adult who has exhibited special care and concern for the patient and who is familiar with the patient’s personal values.

“Person” means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Physician” means an individual authorized to practice medicine or osteopathy under chapter 453 or 460.

“Power of attorney for health care” means the designation of an agent to make health-care decisions for the individual granting the power.

“Primary physician” means a physician designated by an individual or the individual’s agent, guardian, or surrogate, to have primary responsibility for the individual’s health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

“Reasonably available” means able to be contacted with a level of diligence appropriate to the seriousness and urgency of a patient’s health care needs, and willing and able to act in a timely manner considering the urgency of the patient’s health care needs.

“State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

“Supervising health-care provider” means the primary physician or the physician’s designee, or the health-care provider or the provider’s designee who has undertaken primary responsibility for an individual’s health care.

“Surrogate” means an individual, other than a patient’s agent or guardian, authorized under this chapter to make a health-care decision for the patient.

§ -3 **Advance health-care directives.** (a) An adult or emancipated minor may give an individual instruction. The instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(b) An adult or emancipated minor may execute a power of attorney for health care, which may authorize the agent to make any health-care decision the principal could have made while having capacity. The power remains in effect notwithstanding the principal’s later incapacity and may include individual instructions. Unless related to the principal by blood, marriage, or adoption, an agent may not be an owner, operator, or employee of the health-care institution at which the principal is receiving care. The power shall be in writing, contain the date of its execution, be signed by the principal, and be witnessed by one of the following methods:

- (1) Signed by at least two individuals, each of whom witnessed either the signing of the instrument by the principal or the principal’s acknowledgement of the signature of the instrument; or
- (2) Acknowledged before a notary public at any place within this State.
- (c) A witness for a power of attorney for health care shall not be:
 - (1) A health-care provider;
 - (2) An employee of a health-care provider or facility; or
 - (3) The agent.

(d) At least one of the individuals used as a witness for a power of attorney for health care shall be someone who is neither:

- (1) Related to the principal by blood, marriage, or adoption; nor
- (2) Entitled to any portion of the estate of the principal upon the principal’s death under any will or codicil thereto of the principal existing at the time of execution of the power of attorney for health care or by operation of law then existing.

(e) Unless otherwise specified in a power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity, and ceases to be effective upon a determination that the principal has recovered capacity.

(f) Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, shall be made by the primary physician.

(g) An agent shall make a health-care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

(h) A health-care decision made by an agent for a principal shall be effective without judicial approval.

(i) A written advance health-care directive may include the individual's nomination of a guardian of the person.

(j) An advance health-care directive shall be valid for purposes of this chapter if it complies with this chapter, or if it was executed in compliance with the laws of the state where it was executed.

§ -4 Revocation of advance health-care directive. (a) An individual may revoke the designation of an agent only by a signed writing or by personally informing the supervising health-care provider.

(b) An individual may revoke all or part of an advance health-care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(c) A health-care provider, agent, guardian, or surrogate who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising health-care provider and to any health-care institution at which the patient is receiving care.

(d) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for health care.

(e) An advance health-care directive that conflicts with an earlier advance health-care directive revokes the earlier directive to the extent of the conflict.

§ -5 Health-care decisions; surrogates. (a) A patient may designate or disqualify any individual to act as a surrogate by personally informing the supervising health-care provider. In the absence of such a designation, or if the designee is not reasonably available, a surrogate may be appointed to make a health-care decision for the patient.

(b) A surrogate may make a health care decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian has been appointed or the agent or guardian is not reasonably available. Upon a determination that a patient lacks decisional capacity to provide informed consent to or refusal of medical treatment, the primary physician or the physician's designee shall make reasonable efforts to notify the patient of the patient's lack of capacity. The primary physician, or the physician's designee, shall make reasonable efforts to locate as many interested persons as practicable, and the primary physician may rely on such individuals to notify other family members or interested persons.

(c) Upon locating interested persons, the primary physician, or the physician's designee, shall inform such persons of the patient's lack of decisional capacity and that a surrogate decision-maker should be selected for the patient.

(d) Interested persons shall make reasonable efforts to reach a consensus as to who among them shall make health-care decisions on behalf of the patient. The person selected to act as the patient's surrogate should be the person who has a close relationship with the patient and who is the most likely to be currently informed of the patient's wishes regarding health-care decisions. If any of the interested persons disagrees with the selection or the decision of the surrogate, or, if after reasonable

efforts the interested persons are unable to reach a consensus as to who should act as the surrogate decision-maker, then any of the interested persons may seek guardianship of the patient by initiating guardianship proceedings pursuant to chapter 551. Only interested persons involved in the discussions to choose a surrogate may initiate such proceedings with regard to the patient.

(e) If any interested person, the guardian, or primary physician believes the patient has regained decisional capacity, the primary physician shall reexamine the patient and determine whether or not the patient has regained decisional capacity and shall enter a decision and the basis for such decision into the patient's medical record and shall notify the patient, the surrogate decision-maker, and the person who initiated the redetermination of decisional capacity.

(f) A surrogate who has been designated by the patient may make health-care decisions for the patient that the patient could make on the patient's own behalf.

(g) A surrogate who has not been designated by the patient may make all health-care decisions for the patient that the patient could make on the patient's own behalf, except that artificial nutrition and hydration may be withheld or withdrawn for a patient upon a decision of the surrogate only when the primary physician and a second independent physician certify in the patient's medical records that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future.

The surrogate who has not been designated by the patient shall make health-care decisions for the patient based on the wishes of the patient, or, if the wishes of the patient are unknown or unclear, on the patient's best interest.

The decision of a surrogate who has not been designated by the patient regarding whether life-sustaining procedures should be provided, withheld, or withdrawn shall not be based, in whole or in part, on either a patient's preexisting, long-term mental or physical disability, or a patient's economic status. A surrogate who has not been designated by the patient shall inform the patient, to the extent possible, of the proposed procedure and the fact that someone else is authorized to make a decision regarding that procedure.

(h) A health-care decision made by a surrogate for a patient is effective without judicial approval.

(i) A supervising health-care provider shall require a surrogate to provide a written declaration under the penalty of false swearing stating facts and circumstances reasonably sufficient to establish the claimed authority.

§ -6 Decisions by guardian. (a) A guardian shall comply with the ward's individual instructions and shall not revoke the ward's pre-incapacity advance health-care directive unless expressly authorized by a court.

(b) Absent a court order to the contrary, a health-care decision of an agent takes precedence over that of a guardian.

(c) A health-care decision made by a guardian for the ward is effective without judicial approval.

§ -7 Obligations of health-care provider. (a) Before implementing a health-care decision made for a patient, a supervising health-care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

(b) A supervising health-care provider who knows of the existence of an advance health-care directive, a revocation of an advance health-care directive, or a designation or disqualification of a surrogate, shall promptly record its existence in the patient's health-care record and, if it is in writing, shall request a copy and if one is furnished shall arrange for its maintenance in the health-care record.

(c) A supervising health-care provider who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists which affects an individual instruction or the authority of an agent, guardian, or surrogate, shall promptly record the determination in the patient's health-care record and communicate the determination to the patient, if possible, and to any person then authorized to make health-care decisions for the patient.

(d) Except as provided in subsections (e) and (f), a health-care provider or institution providing care to a patient shall:

- (1) Comply with an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health-care decisions for the patient; and
- (2) Comply with a health-care decision for the patient made by a person then authorized to make health-care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(e) A health-care provider may decline to comply with an individual instruction or health-care decision for reasons of conscience. A health-care institution may decline to comply with an individual instruction or health-care decision if the instruction or decision is contrary to a policy of the institution which is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health-care decisions for the patient.

(f) A health-care provider or institution may decline to comply with an individual instruction or health-care decision that requires medically ineffective health care or health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

(g) A health-care provider or institution that declines to comply with an individual instruction or health-care decision shall:

- (1) Promptly so inform the patient, if possible, and any person then authorized to make health-care decisions for the patient;
- (2) Provide continuing care to the patient until a transfer can be effected; and
- (3) Unless the patient or person then authorized to make health-care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health-care provider or institution that is willing to comply with the instruction or decision.

(h) A health-care provider or institution may not require or prohibit the execution or revocation of advance health-care directive as a condition for providing health care.

§ -8 Health-care information. Unless otherwise specified in an advance health-care directive, a person then authorized to make health-care decisions for a patient has the same rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any other health-care information.

§ -9 Immunities. (a) A health-care provider or institution acting in good faith and in accordance with generally accepted health-care standards applicable to the health-care provider or institution shall not be subject to civil or criminal liability or to discipline for unprofessional conduct for:

- (1) Complying with a health-care decision of a person apparently having authority to make a health-care decision for a patient, including a decision to withhold or withdraw health care;
- (2) Declining to comply with a health-care decision of a person based on a belief that the person then lacked authority; or

(3) Complying with an advance health-care directive and assuming that the directive was valid when made and has not been revoked or terminated.

(b) An individual acting as agent, guardian, or surrogate under this chapter shall not be subject to civil or criminal liability or to discipline for unprofessional conduct for health-care decisions made in good faith.

§ **-10 Statutory damages.** (a) A health-care provider or institution that intentionally violates this chapter shall be subject to liability to the individual or the individual's estate for damages of \$500 or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.

(b) A person who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's advance health-care directive or a revocation of an advance health-care directive without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give an advance health-care directive, shall be subject to liability to that individual for damages of \$2,500 or actual damages resulting from the action, whichever is greater, plus reasonable attorney's fees.

§ **-11 Capacity.** (a) This chapter does not affect the right of an individual to make health-care decisions while having capacity to do so.

(b) An individual is presumed to have capacity to make a health-care decision, to give or revoke an advance health-care directive, and to designate or disqualify a surrogate.

§ **-12 Effect of copy.** A copy of a written advance health-care directive, revocation of an advance health-care directive, or designation or disqualification of a surrogate has the same effect as the original.

§ **-13 Effect of this chapter.** (a) This chapter shall not create a presumption concerning the intention of an individual who has not made or who has revoked an advance health-care directive.

(b) Death resulting from the withholding or withdrawal of health care in accordance with this chapter shall not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary.

(c) This chapter shall not authorize mercy killing, assisted suicide, euthanasia, or the provision, withholding, or withdrawal of health care, to the extent prohibited by other statutes of this State.

(d) This chapter shall not authorize or require a health-care provider or institution to provide health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

(e) This chapter shall not authorize an agent or surrogate to consent to the admission of an individual to a psychiatric facility as defined in chapter 334, unless the individual's written advance health-care directive expressly so provides.

(f) This chapter shall not affect other statutes of this State governing treatment for mental illness of an individual involuntarily committed to a psychiatric facility.

(g) This chapter shall not apply to a patient diagnosed as pregnant by the attending physician.

§ **-14 Judicial relief.** On petition of a patient, the patient's agent, guardian, or surrogate, or a health-care provider or institution involved with the patient's care, any court of competent jurisdiction may enjoin or direct a health-care decision

or order other equitable relief. A proceeding under this section shall be governed by part 3 of article V of chapter 560.

§ -15 **Uniformity of application and construction.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§ -16 **Optional form.** The following sample form may be used to create an advance health-care directive. This form may be duplicated. This form may be modified to suit the needs of the person, or a completely different form may be used that contains the substance of the following form.

“ADVANCE HEALTH-CARE DIRECTIVE
Explanation

You have the right to give instructions about your own health care. You also have the right to name someone else to make health-care decisions for you. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your health care provider. If you use this form, you may complete or modify all or any part of it. You are free to use a different form.

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions or if you want someone else to make those decisions for you now even though you are still capable. You may name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a health-care institution where you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health-care decisions for you. This form has a place for you to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on your agent for all health-care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right to:

- (a) Consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition;
- (b) Select or discharge health-care providers and institutions;
- (c) Approve or disapprove diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and
- (d) Direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care.

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief medication. Space is provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 4 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end and have the form witnessed by one of the two alternative methods listed below. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care, and to any health-care agents you have named. You should talk to the person you have

named as agent to make sure that he or she understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health-care directive or replace this form at any time.

PART 1
DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS

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

(name of individual you choose as agent)			
(address)	(city)	(state)	(zip code)
(home phone)	(work phone)		

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

(name of individual you choose as first alternate agent)			
(address)	(city)	(state)	(zip code)
(home phone)	(work phone)		

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

(name of individual you choose as second alternate agent)			
(address)	(city)	(state)	(zip code)
(home phone)	(work phone)		

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

(Add additional sheets if needed.)

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

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

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named, in the order designated.

PART 2
INSTRUCTIONS FOR HEALTH CARE

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

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

(a) Choice Not To Prolong Life

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

(b) Choice To Prolong Life

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

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

(8) RELIEF FROM PAIN: If I mark this box , I direct that treatment to alleviate pain or discomfort should be provided to me even if it hastens my death.

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

(Add additional sheets if needed.)

PART 3
DONATION OF ORGANS AT DEATH
(OPTIONAL)

(10) Upon my death: (mark applicable box)

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

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

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

- (i) Transplant
- (ii) Therapy
- (iii) Research
- (iv) Education

PART 4
PRIMARY PHYSICIAN
(OPTIONAL)

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

(name of physician)

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

(phone)

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

(name of physician)

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

(phone)

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

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

(date) (sign your name)

(address) (print your name)

(city) (state)

(14) WITNESSES: This power of attorney will not be valid for making health-care decisions unless it is either (a) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; or (b) acknowledged before a notary public in the state.

ALTERNATIVE NO. 1

Witness

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health-care provider, nor an employee of a health-care provider or facility. I am not related to the principal by blood, marriage, or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law.

(date) (signature of witness)

(address) (printed name of witness)

(city) (state)

Witness

I declare under penalty of false swearing pursuant to section 710-1062, Hawaii Revised Statutes, that the principal is personally known to me, that the principal signed or acknowledged this power of attorney in my presence, that the

principal appears to be of sound mind and under no duress, fraud, or undue influence, that I am not the person appointed as agent by this document, and that I am not a health-care provider, nor an employee of a health-care provider or facility.

(date) (signature of witness)

(address) (printed name of witness)

(city) (state)

ALTERNATIVE NO. 2

State of Hawaii

County of _____

On this ____ day of _____, in the year ____, before me, _____

(insert name of notary public) appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it.

Notary Seal

(Signature of Notary Public)''

SECTION 2. Section 551D-2.5, Hawaii Revised Statutes, is amended to read as follows:

“**[[§551D-2.5]] Durable power of attorney for health care decisions.** [(a)] A competent person who has attained the age of majority may execute a durable power of attorney authorizing an agent to make any lawful health care decisions [that could have been made by the principal at the time of election.] pursuant to chapter _____.

- [(b)] The durable power of attorney made pursuant to this section:
 - (1) Shall be in writing;
 - (2) Shall be signed by the principal, or by another person in the principal’s presence and at the principal’s expressed direction;
 - (3) Shall be dated;
 - (4) Shall be signed in the presence of two or more witnesses who:
 - (A) Are at least eighteen years of age;
 - (B) Are not related to the principal by blood, marriage, or adoption; and
 - (C) Are not, at the time that the durable power of attorney is executed, attending physicians, employees of an attending physician, or employees of a health care facility in which the principal is a patient; and
 - (5) Shall have all signatures notarized at the same time.

(c) A durable power of attorney for health care decisions shall be presumed not to grant authority to decide that the principal’s life should not be prolonged through surgery, resuscitation, life sustaining medicine or procedures or the provision of nutrition or hydration, unless such authority is explicitly stated.

(d) A durable power of attorney for health care decisions shall only be effective during the period of incapacity of the principal as determined by a licensed physician.

(e) No person shall serve as both the treating physician and attorney-in-fact for any principal for matters relating to health care decisions.

(f) A durable power of attorney for health care decisions executed prior to June 12, 1992, that substantially complies with the requirements of this chapter shall be considered valid provided that the powers relating to the health care decisions

granted in the power of attorney have not been previously revoked by the principal or otherwise terminated.]”

SECTION 3. Section 551D-2.6, Hawaii Revised Statutes, is repealed.

SECTION 4. Chapter 327D, Hawaii Revised Statutes, is repealed.

SECTION 5. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 6. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved July 1, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.