

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3815

 By: Stinson

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to health care power of attorney;
10 creating the Oklahoma Health Care Agent Act; defining
11 terms; authorizing execution of power of attorney for
12 health care; establishing requirements for execution
13 of power of attorney for health care; specifying when
14 power of attorney for health care is effective;
15 establishing requirements for revocation of power of
16 attorney for health care; creating optional form for
17 execution of power of attorney for health care;
18 requiring certain communication by health care
19 provider; requiring record of certain information;
20 requiring certain compliance by health care provider;
21 providing exceptions; requiring notice of certain
22 noncompliance; authorizing access to certain
23 information; establishing immunity from liability for
24 certain actions; creating certain presumption;
 stating effectiveness of copy; construing provisions;
 providing for judicial relief; requiring retroactive
 application of provisions to certain documents;
 amending 63 O.S. 2021, Sections 1-1973, 3102.4,
 3105.2, 3131.3, and 3131.5, which relate to the Home
 Care Act, the Oklahoma Advance Directive Act, the
 Physician Orders for Life-Sustaining Treatment Act,
 and the Oklahoma Do-Not-Resuscitate Act; updating
 statutory references; providing for codification; and
 declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3111.1 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 This act shall be known and may be cited as the "Oklahoma Health
5 Care Agent Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 3111.2 of Title 63, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in the Oklahoma Health Care Agent Act:

10 1. "Advance directive for health care" means any writing
11 executed in accordance with the requirements of Section 3101.4 of
12 Title 63 of the Oklahoma Statutes;

13 2. "Agent" means an individual designated in a power of
14 attorney for health care to make a health care decision for the
15 individual granting the power;

16 3. "Attending physician" means the physician who has primary
17 responsibility for the treatment and care of a patient;

18 4. "Capacity" means an individual's ability to understand and
19 appreciate the nature and implications of a health care decision, to
20 make an informed choice regarding the alternatives presented
21 including understanding and appreciating the significant benefits
22 and risks, and to make and communicate a health care decision in an
23 unambiguous manner;

24

1 5. "Health care" means any care, treatment, service, or
2 procedure to maintain, diagnose, or otherwise affect an individual's
3 physical or mental condition;

4 6. "Health care decision" means a decision made by an
5 individual or the individual's agent regarding the individual's
6 health care including:

7 a. selection and discharge of health care providers and
8 facilities,

9 b. consent to or refusal of any care, treatment, service,
10 or procedure to maintain, diagnose, or otherwise
11 affect a physical or mental condition, and

12 c. signing a do-not-resuscitate consent in accordance
13 with the provisions of the Oklahoma Do-Not-Resuscitate
14 Act, Section 3131.1 et seq. of Title 63 of the
15 Oklahoma Statutes.

16 Health care decision shall not include the ability of the agent to
17 make decisions about the withholding or withdrawal of nutrition or
18 hydration;

19 7. "Health care facility" means any public or private
20 organization, corporation, authority, partnership, sole
21 proprietorship, association, agency, network, joint venture, or
22 other entity that is established and appropriately licensed in this
23 state to administer or provide health care services. Health care
24 facility includes but is not limited to hospitals, medical centers,

1 ambulatory surgery centers, physicians' offices, clinics, nursing
2 homes, rehabilitation centers, home care agencies, hospices, and
3 long-term care agencies;

4 8. "Health care provider" means a person who is licensed,
5 certified, or otherwise authorized by the laws of this state to
6 administer health care in the ordinary course of business or
7 practice of a profession;

8 9. "Individual instruction" means an individual's direction
9 concerning a health care decision for the individual;

10 10. "Person" means a person eighteen (18) years of age or older
11 or a minor who may consent to have services provided by health
12 professionals pursuant to Section 2602 of Title 63 of the Oklahoma
13 Statutes;

14 11. "Physician" means an individual authorized to practice
15 medicine or osteopathy pursuant to Chapter 11 or Chapter 14 of Title
16 59 of the Oklahoma Statutes;

17 12. "Power of attorney for health care" means the designation
18 of an agent to make health care decisions for the individual
19 granting the power;

20 13. "Reasonably available" means readily able to be contacted
21 without undue effort and willing and able to act in a timely manner
22 considering the urgency of the patient's health care needs; and
23
24

1 14. "State" means a state of the United States, the District of
2 Columbia, the Commonwealth of Puerto Rico, or a territory or insular
3 possession subject to the jurisdiction of the United States.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 3111.3 of Title 63, unless there
6 is created a duplication in numbering, reads as follows:

7 A. A person with capacity may give an oral or written
8 individual instruction. The instruction may be limited to take
9 effect only if a specified condition arises.

10 B. A person with capacity may execute a power of attorney for
11 health care, which may authorize the agent to make any health care
12 decision the principal could have made while having capacity, except
13 the withholding or withdrawal of nutrition or hydration, which may
14 only be authorized in compliance with the Oklahoma Advance Directive
15 Act. The power remains in effect notwithstanding the principal's
16 later incapacity and may include individual instructions. Unless
17 related to the principal by blood, marriage, or adoption, an agent
18 may not be an owner, operator, or employee of a residential long-
19 term health care institution at which the principal is receiving
20 care.

21 C. Unless otherwise specified in a power of attorney for health
22 care, the authority of an agent becomes effective only upon a
23 determination that the principal lacks capacity and ceases to be
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1 effective upon a determination that the principal has recovered
2 capacity.

3 D. Unless otherwise specified in a power of attorney for health
4 care, a determination that an individual lacks or has recovered
5 capacity, or that another condition exists that affects an
6 individual instruction or the authority of an agent, shall be made
7 by the attending physician.

8 E. An agent shall make health care decisions in accordance with
9 the principal's individual instructions, if any, and other wishes to
10 the extent known to the agent. Otherwise, the agent shall make the
11 decision in accordance with the agent's determination of the
12 principal's best interest. In determining the principal's best
13 interest, the agent shall consider the principal's personal values
14 to the extent known to the agent.

15 F. A health care decision made by an agent for a principal is
16 effective without judicial approval.

17 G. A power of attorney for health care shall be signed by the
18 principal and witnessed by two individuals who are at least eighteen
19 (18) years of age and who are not legatees, devisees, or heirs at
20 law of the principal.

21 H. A power of attorney for health care is valid for purposes of
22 this act if it is in substantial compliance with this act,
23 regardless of when or where executed or communicated.

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3111.4 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 A. An individual may revoke the designation of an agent by a
5 signed writing or by personally informing the health care provider
6 at any time and in any manner that communicates an intent to revoke.

7 B. A health care provider or agent who is informed of a
8 revocation shall promptly communicate the fact of the revocation to
9 the attending physician and to any health care facility at which the
10 patient is receiving care.

11 C. A decree of annulment, divorce, dissolution of marriage, or
12 legal separation revokes a previous designation of a spouse as agent
13 unless otherwise specified in the decree or specifically enumerated
14 in a power of attorney for health care.

15 D. A power of attorney for health care that conflicts with an
16 earlier power of attorney for health care revokes the earlier power
17 of attorney to the extent of the conflict.

18 SECTION 5. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3111.5 of Title 63, unless there
20 is created a duplication in numbering, reads as follows:

21 The following form may, but need not, be used to create a power
22 of attorney for health care. The other sections of this act govern
23 the effect of this form or any other writing used to create a power
24

1 of attorney for health care. An individual may complete or modify
2 all or any part of the following form:

3 HEALTH CARE POWER OF ATTORNEY

4 You have the right to give instructions about your own health
5 care. You also have the right to name someone else to make health
6 care decisions for you. This form lets you do either or both of
7 these things. If you use this form, you may complete or modify all
8 or any part of it. You are free to use a different form.

9 This form is a power of attorney for health care that lets you
10 name another individual as agent to make health care decisions for
11 you if you become incapable of making your own decisions or if you
12 want someone else to make those decisions for you now even though
13 you are still capable. You may also name an alternate agent to act
14 for you if your first choice is not willing, able, or reasonably
15 available to make decisions for you. Unless related to you, your
16 agent may not be an owner, operator, or employee of a residential
17 long-term health care institution at which you are receiving care.

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

- 1 1. Consent or refuse consent to any care, treatment, service,
2 or procedure to maintain, diagnose, or otherwise affect a physical
3 or mental condition;
- 4 2. Select or discharge health care providers and facilities;
5 and
- 6 3. Sign a do-not-resuscitate consent.

7 **This form does not authorize the agent to make any decisions**
8 **regarding the withholding or withdrawal of nutrition or hydration.**

9 After completing this form, sign and date the form at the end.
10 It is required that two other individuals sign as witnesses. These
11 witnesses must be at least 18 years old and not related to you or
12 named to inherit from you. Give a copy of the signed and completed
13 form to your physician, to any other health care providers you may
14 have, to any health care facility at which you are receiving care,
15 and to any health care agents you have named. You should talk to
16 the person you have named as agent to make sure that he or she
17 understands your wishes and is willing to take the responsibility.

18 You have the right to revoke this power of attorney for health
19 care or replace this form at any time.

20 POWER OF ATTORNEY FOR HEALTH CARE

21 1. DESIGNATION OF AGENT: I designate the following individual
22 as my agent to make health care decisions for me:

23 _____

24 (name of individual you choose as agent)

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(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)

1 2. AGENT'S AUTHORITY: My agent is authorized to make all
2 health care decisions (not to include the withholding or withdrawal
3 of nutrition or hydration) for me that I could make if I were able,
4 except as I state here:

5 _____
6 _____
7 _____

8 (Add additional sheets if needed.)

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

14 _____
15 (Initials)

16 4. AGENT'S OBLIGATION: My agent shall make health care
17 decisions for me in accordance with this power of attorney for
18 health care and my other wishes to the extent known to my agent. To
19 the extent my wishes are unknown, my agent shall make health care
20 decisions for me in accordance with what my agent determines to be
21 in my best interest. In determining my best interest, my agent
22 shall consider the decisions I would have made myself to the extent
23 known to my agent.

24 _____

1 (Initials)

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

5 _____
6 _____

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

11 _____
12 _____

13 (Add additional sheets if needed.)

14 7. EFFECT OF COPY: A copy of this form has the same effect as
15 the original.

16 8. SIGNATURES: Sign and date the form here:

17 _____

18 (date) (sign your name)

19 _____

20 (address) (print your name)

21 _____

22 (city) (state)

23 SIGNATURES OF WITNESSES:

24 First witness Second witness

1			
2	(print name)		(print name)
3			
4	(address)		(address)
5			
6	(city) (state)		(city) (state)
7			
8	(signature of witness)		(signature of witness)
9			
10	(date)		(date)

11 SECTION 6. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 3111.6 of Title 63, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Before implementing a health care decision made for a
15 patient, the attending physician, if possible, shall promptly
16 communicate to the patient the decision made and the identity of the
17 person making the decision.

18 B. An attending physician who knows of the existence of a power
19 of attorney for health care or a revocation of a power of attorney
20 for health care shall promptly record its existence in the patient's
21 medical record and, if it is in writing, shall request a copy and if
22 one is furnished shall arrange for its maintenance in the medical
23 record. An attending physician who makes or is informed of a
24 determination that a patient lacks or has recovered capacity shall

1 promptly record the determination in the patient's medical record
2 and communicate the determination to the patient, if possible, and
3 to any person then authorized to make health care decisions for the
4 patient.

5 C. Except as provided in subsections D and E of this section, a
6 health care provider or facility providing care to a patient shall:

7 1. Comply with an individual instruction of the patient and
8 with a reasonable interpretation of that instruction made by a
9 person then authorized to make health care decisions for the
10 patient; and

11 2. Comply with a health care decision for the patient made by a
12 person then authorized to make health care decisions for the patient
13 to the same extent as if the decision had been made by the patient
14 while having capacity.

15 D. An attending physician or health care provider may decline
16 to comply with an individual instruction or health care decision for
17 reasons of conscience. A health care facility may decline to comply
18 with an individual instruction or health care decision if the
19 instruction or decision is contrary to a policy of the facility
20 which is expressly based on reasons of conscience and if the policy
21 was timely communicated to the patient or to a person then
22 authorized to make health care decisions for the patient.

23 E. A health care provider or facility may decline to comply
24 with an individual instruction or health care decision that requires

1 medically ineffective or nonbeneficial health care or health care
2 contrary to generally accepted health care standards applicable to
3 the health care provider or facility.

4 F. A health care provider or facility that declines to comply
5 with an individual instruction or health care decision shall:

6 1. Promptly so inform the patient, if possible, and any person
7 then authorized to make health care decisions for the patient;

8 2. Provide continuing care to the patient until a transfer can
9 be effected; and

10 3. Unless the patient or person then authorized to make health
11 care decisions for the patient refuses assistance, immediately make
12 all reasonable efforts to assist in the transfer of the patient to
13 another health care provider or facility that is willing to comply
14 with the instruction or decision.

15 G. A health care provider or facility may not require or
16 prohibit the execution or revocation of an advance health care
17 directive as a condition for providing health care.

18 SECTION 7. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3111.7 of Title 63, unless there
20 is created a duplication in numbering, reads as follows:

21 Unless otherwise specified in a power of attorney for health
22 care, a person then authorized to make health care decisions for a
23 patient has the same rights as the patient to request, receive,

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1 examine, copy, and consent to the disclosure of medical or any other
2 health care information.

3 SECTION 8. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3111.8 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 A. A health care provider or facility acting in good faith and
7 in accordance with generally accepted health care standards
8 applicable to the health care provider or facility shall not be
9 subject to civil or criminal liability or to discipline for
10 unprofessional conduct for:

11 1. Complying with a health care decision of a person apparently
12 having authority to make a health care decision for a patient;

13 2. Declining to comply with a health care decision of a person
14 based on a belief that the person then lacked authority; or

15 3. Complying with a power of attorney for health care and
16 assuming that the designation was valid when made and has not been
17 revoked or terminated.

18 B. An individual acting as agent under this act shall not be
19 subject to civil or criminal liability or to discipline for
20 unprofessional conduct for health care decisions made in good faith.

21 SECTION 9. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 3111.9 of Title 63, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A. This act shall not be construed to affect the right of an
2 individual to make health care decisions while having capacity to do
3 so.

4 B. An individual is presumed to have capacity to make a health
5 care decision and to give or revoke powers of attorney for health
6 care.

7 SECTION 10. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 3111.10 of Title 63, unless
9 there is created a duplication in numbering, reads as follows:

10 A copy of a written power of attorney for health care or
11 revocation of a power of attorney for health care has the same
12 effect as the original.

13 SECTION 11. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3111.11 of Title 63, unless
15 there is created a duplication in numbering, reads as follows:

16 A. This act shall not be construed to create a presumption
17 concerning the intention of an individual who has not made or who
18 has revoked a power of attorney for health care.

19 B. This act shall not be construed to authorize or require a
20 health care provider or facility to provide health care contrary to
21 generally accepted health care standards applicable to the health
22 care provider or facility.

23 C. This act shall not be construed to authorize an agent to
24 consent to the admission of an individual to a mental health care

1 facility unless the individual's written directive expressly so
2 provides.

3 D. This act shall not affect other statutes of this state
4 governing treatment for mental illness of an individual
5 involuntarily committed to a mental health care facility under
6 Chapter 1 of Title 43A of the Oklahoma Statutes.

7 SECTION 12. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 3111.12 of Title 63, unless
9 there is created a duplication in numbering, reads as follows:

10 On petition of a patient, the patient's agent, or a health care
11 provider or facility involved with the patient's care, the court may
12 enjoin or direct a health care decision or order other equitable
13 relief. A proceeding under this section shall be governed by Title
14 12 of the Oklahoma Statutes.

15 SECTION 13. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 3111.13 of Title 63, unless
17 there is created a duplication in numbering, reads as follows:

18 Any document made in substantial compliance with the
19 requirements of the Oklahoma Health Care Agent Act, regardless of
20 date, shall have full force and effect.

21 SECTION 14. AMENDATORY 63 O.S. 2021, Section 1-1973, is
22 amended to read as follows:

23 Section 1-1973. A. Patients who are capable of self-
24 administering their own medications without assistance shall be

1 encouraged and allowed to do so. However, a certified nurse aide
2 may assist a patient whose condition is medically stable with the
3 self-administration of routine, regularly scheduled medications that
4 are intended to be self-administered, if the following conditions
5 are met:

6 1. For an oral medication, the medication shall have been
7 placed in a medication planner by a registered nurse, a relative of
8 the patient or nursing staff of an Oklahoma licensed home health or
9 hospice agency that is currently serving the patient; and

10 2. For all other forms, the certified nurse aide shall assist
11 with self-administration consistent with a dispensed prescription's
12 label or the package directions of an over-the-counter medication.

13 B. For purposes of this section, self-administered medications
14 include both legend and over-the-counter oral dosage forms, topical
15 dosage forms and topical ophthalmic, otic and nasal dosage forms,
16 including solutions, suspensions, sprays and inhalers.

17 C. Assistance with self-administration of medication by a
18 certified nurse aide may occur only upon a documented request by,
19 and the written informed consent of, a patient or the patient's
20 surrogate, guardian or attorney-in-fact.

21 D. For purposes of this section, assistance with self-
22 administration of medication includes:

23 1. Taking an oral medication out of a pill planner and bringing
24 it to the patient;

1 2. Placing an oral dosage in the patient's hand or placing the
2 dosage in another container and helping the patient by lifting the
3 container to his or her mouth;

4 3. If ordered by a physician, placing an oral medication in
5 food before the patient self-administers;

6 4. Crushing an oral medication pursuant to orders given by a
7 physician or health care professional;

8 5. Applying topical medications; and

9 6. Keeping a record of when a patient receives assistance with
10 self-administration pursuant to this section.

11 E. For purposes of this section, assistance with self-
12 administration of medication does not include:

13 1. Removing oral medication from any container other than a
14 pill planner;

15 2. Mixing, compounding, converting or calculating medication
16 doses;

17 3. The preparation of syringes for injection or the
18 administration of medications by any injectable route;

19 4. Administration of medications through intermittent positive
20 pressure breathing machines;

21 5. Administration of medications by way of a tube inserted in a
22 cavity of the body;

23 6. Administration of parenteral preparations;

24

1 7. Irrigations or debriding agents used in the treatment of a
2 skin condition;

3 8. Rectal, urethral, or vaginal preparations;

4 9. Medications ordered by the physician or health care
5 professional with prescriptive authority to be given "as needed",
6 unless the order is written with specific parameters that preclude
7 independent judgment on the part of the certified nurse aide, and at
8 the request of a competent patient;

9 10. Medications for which the time of administration, the
10 amount, the strength of dosage, the method of administration or the
11 reason for administration requires judgment or discretion on the
12 part of the certified nurse aide; or

13 11. Assistance with the self-administration of medication by a
14 certified nurse aide in an assisted living center through home care
15 services as provided for in Section 1-890.8 of ~~Title 63 of the~~
16 ~~Oklahoma Statutes~~ this title.

17 F. Assistance with the self-administration of medication by a
18 certified nurse aide as described in this section does not
19 constitute administration as defined in Section 353.1 of Title 59 of
20 the Oklahoma Statutes.

21 G. The State Commissioner of Health may by rule establish
22 procedures and interpret terms as necessary to implement the
23 provisions of this section.

24 H. For purposes of this section:

1 1. "Informed consent" means advising the patient, or the
2 patient's surrogate, guardian or attorney-in-fact, that the patient
3 may be receiving assistance with self-administration of medication
4 from a certified nurse aide; and

5 2. "Attorney-in-fact" means an attorney-in-fact authorized to
6 act pursuant to the ~~Uniform Durable Power of Attorney Act, Sections~~
7 ~~1071 through 1077 of Title 58 of the Oklahoma Statutes~~ Oklahoma
8 Health Care Agent Act, with authority to act regarding the patient's
9 health and medical care decisions, subject to the limitations under
10 ~~paragraph 1 of subsection B of Section 1072.1 of Title 58 of the~~
11 ~~Oklahoma Statutes~~ the Oklahoma Health Care Agent Act.

12 SECTION 15. AMENDATORY 63 O.S. 2021, Section 3102.4, is
13 amended to read as follows:

14 Section 3102.4 A. When an adult patient or a person under
15 eighteen (18) years of age who may consent to have services provided
16 by health professionals under Section 2602 of this title is
17 persistently unconscious, incompetent or otherwise mentally or
18 physically incapable of communicating, a person who is reasonably
19 available and willing in the following classes, in the order of
20 priority set forth in this subsection, shall be authorized to make
21 health care decisions for the patient under the same standard as
22 that applicable to making life-sustaining treatment decisions under
23 Section 3101.16 of this title, excluding any person who is
24 disqualified from exercising such authority by Section 3102.5 of

1 this title. If those within a class disagree, a majority within the
2 class may make a health care decision for the patient. However, a
3 provider of health care to the patient or any member or members of
4 any of the following classes may petition a court that would have
5 jurisdiction over a guardianship proceeding concerning the patient
6 under Section 1-115 of Title 30 of the Oklahoma Statutes to seek an
7 order directing a different health care decision on the ground that
8 the health care decision or decisions made violate the standard
9 required by this section, granting another member or other members
10 from among the following classes (notwithstanding the statutory
11 order of priority) supervening authority to make health care
12 decisions for the patient on the ground that clear and convincing
13 evidence demonstrates they are more likely to adhere to that
14 standard, or both. Upon motion by any party, the court shall issue
15 an order requiring that pending its decision on the merits and the
16 resolution of any appeal the patient be provided with health care of
17 which denial, in reasonable medical judgment, would be likely to
18 result in or hasten the death of the patient, unless its provision
19 would require denial of the same health care to another patient.

20 The classes are as follows:

- 21 1. A general guardian of the person appointed pursuant to
22 subsection A of Section 3-112 of Title 30 of the Oklahoma Statutes
23 or a limited guardian of the person appointed pursuant to subsection
24 B of Section 3-112 of Title 30 of the Oklahoma Statutes with

1 authority to make personal medical decisions as determined under
2 paragraph 5 of subsection B of Section 3-113 of Title 30 of the
3 Oklahoma Statutes;

4 2. A health care proxy, or alternate health care proxy,
5 designated by the patient, as defined in paragraph 6 of Section
6 3101.3 of ~~Title 63 of the Oklahoma Statutes~~ this title;

7 3. An attorney-in-fact authorized to act pursuant to the
8 ~~Uniform Durable Power of Attorney Act, Sections 1071 through 1077 of~~
9 ~~Title 58 of the Oklahoma Statutes~~ Oklahoma Health Care Agent Act,
10 with authority to act regarding the patient's health and medical
11 care decisions, subject to the limitations under ~~paragraph 1 of~~
12 ~~subsection B of Section 1072.1 of Title 58 of the Oklahoma Statutes~~
13 the Oklahoma Health Care Agent Act;

14 4. The patient's spouse;

15 5. Adult children of the patient;

16 6. Parents of the patient;

17 7. Adult siblings;

18 8. Other adult relatives of the patient in order of kinship; or

19 9. Close friends of the patient who have maintained regular
20 contact with the patient sufficient to be familiar with the
21 patient's personal values. Execution of an affidavit stating
22 specific facts and circumstances documenting such contact
23 constitutes prima facie evidence of close friendship.

24

1 B. Prior to making a health care decision for a patient
2 pursuant to subsection A of this section, a person shall provide to
3 the health care provider or health care entity a signed copy of the
4 following statement to be entered into the patient's medical record:

5 "I hereby certify that:

6 I have not been convicted of, pleaded guilty to or pleaded no
7 contest to the crimes of abuse, verbal abuse, neglect or financial
8 exploitation by a caregiver; exploitation of an elderly person or
9 disabled adult; or abuse, neglect, exploitation or sexual abuse of a
10 child;

11 I have not been found to have committed abuse, verbal abuse or
12 exploitation by a final investigative finding of the State
13 Department of Health or Department of Human Services or by a finding
14 of an administrative law judge, unless it was overturned on appeal;
15 and

16 I have not been criminally charged as a person responsible for
17 the care of a vulnerable adult with a crime resulting in the death
18 or near death of a vulnerable adult".

19 SECTION 16. AMENDATORY 63 O.S. 2021, Section 3105.2, is
20 amended to read as follows:

21 Section 3105.2 As used in the Physician Orders for Life-
22 Sustaining Treatment Act:

23 1. "Attorney-in-fact" means an attorney-in-fact authorized to
24 act pursuant to the ~~Uniform Durable Power of Attorney Act, Sections~~

1 ~~1071 through 1077 of Title 58 of the Oklahoma Statutes~~ Oklahoma
2 Health Care Agent Act, with authority to act regarding the patient's
3 health and medical care decisions, subject to the limitations under
4 ~~paragraph 1 of subsection B of Section 1072.1 of Title 58 of the~~
5 ~~Oklahoma Statutes~~ the Oklahoma Health Care Agent Act;

6 2. "Guardian" means a general guardian of the person appointed
7 pursuant to subsection A of Section 3-112 of Title 30 of the
8 Oklahoma Statutes or a limited guardian of the person appointed
9 pursuant to subsection B of Section 3-112 of Title 30 of the
10 Oklahoma Statutes with the authority to make personal medical
11 decisions as determined under paragraph 5 of subsection B of Section
12 3-113 of Title 30 of the Oklahoma Statutes;

13 3. "Health care provider" means a person who is licensed,
14 certified or otherwise authorized by the laws of this state to
15 administer health care in the ordinary course of business or
16 practice of a profession;

17 4. "Health care proxy" means a health care proxy (or alternate
18 health care proxy) authorized to act pursuant to the Oklahoma
19 Advance Directive Act, Sections 3101.1 through 3101.16 of ~~Title 63~~
20 ~~of the Oklahoma Statutes~~ this title, as defined in paragraph 6 of
21 Section 3101.3 of ~~Title 63 of the Oklahoma Statutes~~ this title; and

22 5. "Other legally authorized person" means a person, other than
23 a minor's custodial parent or guardian, the patient or the patient's
24

1 attorney-in-fact, guardian or health care proxy, who has authority
2 to make health care decisions for the patient under common law.

3 SECTION 17. AMENDATORY 63 O.S. 2021, Section 3131.3, is
4 amended to read as follows:

5 Section 3131.3 As used in the Oklahoma Do-Not-Resuscitate Act:

6 1. "Attending physician" means a licensed physician who has
7 primary responsibility for treatment or care of the person. If more
8 than one physician shares that responsibility, any of those
9 physicians may act as the attending physician under the provisions
10 of the Oklahoma Do-Not-Resuscitate Act;

11 2. "Cardiopulmonary resuscitation" means those measures used to
12 restore or support cardiac or respiratory function in the event of a
13 cardiac or respiratory arrest;

14 3. "Do-not-resuscitate identification" means a standardized
15 identification necklace, bracelet, or card as set forth in the
16 Oklahoma Do-Not-Resuscitate Act that signifies that a do-not-
17 resuscitate consent or order has been executed for the possessor;

18 4. "Do-not-resuscitate order" means an order issued by a
19 licensed physician that cardiopulmonary resuscitation should not be
20 administered to a particular person;

21 5. "Emergency medical services personnel" means firefighters,
22 law enforcement officers, emergency medical technicians, paramedics,
23 or other emergency services personnel, providers, or entities,
24 acting within the usual course of their professions;

1 6. "Health care decision" means a decision to give, withhold,
2 or withdraw informed consent to any type of health care including,
3 but not limited to, medical and surgical treatments including life-
4 prolonging interventions, nursing care, hospitalization, treatment
5 in a nursing home or other extended care facility, home health care,
6 and the gift or donation of a body organ or tissue;

7 7. "Health care agency" means an agency established to
8 administer or provide health care services and which is commonly
9 known by a wide variety of titles including, but not limited to,
10 hospitals, medical centers, ambulatory health care facilities,
11 physicians' offices and clinics, extended care facilities operated
12 in connection with hospitals, nursing homes, extended care
13 facilities operated in connection with rehabilitation centers, home
14 care agencies and hospices;

15 8. "Health care provider" means any physician, dentist, nurse,
16 paramedic, psychologist, or other person providing medical, dental,
17 nursing, psychological, hospice, or other health care services of
18 any kind;

19 9. "Incapacity" means the inability, because of physical or
20 mental impairment, to appreciate the nature and implications of a
21 health care decision, to make an informed choice regarding the
22 alternatives presented, and to communicate that choice in an
23 unambiguous manner; and
24

1 10. "Representative" means an attorney-in-fact for health care
2 decisions acting pursuant to the ~~Uniform Durable Power of Attorney~~
3 ~~Act~~ Oklahoma Health Care Agent Act, a health care proxy acting
4 pursuant to the ~~Oklahoma Rights of the Terminally Ill or~~
5 ~~Persistently Unconscious Act~~ Oklahoma Advance Directive Act, or a
6 guardian of the person appointed under the Oklahoma Guardianship and
7 Conservatorship Act.

8 SECTION 18. AMENDATORY 63 O.S. 2021, Section 3131.5, is
9 amended to read as follows:

10 Section 3131.5 A. For persons under the care of a health care
11 agency, a do-not-resuscitate order shall, if issued, be in
12 accordance with the policies and procedures of the health care
13 agency as long as not in conflict with the provisions of the
14 Oklahoma Do-Not-Resuscitate Act.

15 B. The do-not-resuscitate consent form shall be in
16 substantially the following form:

17 FRONT PAGE

18 OKLAHOMA DO-NOT-RESUSCITATE (DNR) CONSENT FORM

19 I, _____, request limited health care as
20 described in this document. If my heart stops beating or if I stop
21 breathing, no medical procedure to restore breathing or heart
22 function will be instituted by any health care provider including,
23 but not limited to, emergency medical services (EMS) personnel.

24

1 I understand that this decision will not prevent me from
2 receiving other health care such as the Heimlich maneuver or oxygen
3 and other comfort care measures.

4 I understand that I may revoke this consent at any time in one
5 of the following ways:

6 1. If I am under the care of a health care agency, by making an
7 oral, written, or other act of communication to a physician or other
8 health care provider of a health care agency;

9 2. If I am not under the care of a health care agency, by
10 destroying my do-not-resuscitate form, removing all do-not-
11 resuscitate identification from my person, and notifying my
12 attending physician of the revocation;

13 3. If I am incapacitated and under the care of a health care
14 agency, my representative may revoke the do-not-resuscitate consent
15 by written notification to a physician or other health care provider
16 of the health care agency or by oral notification to my attending
17 physician; or

18 4. If I am incapacitated and not under the care of a health
19 care agency, my representative may revoke the do-not-resuscitate
20 consent by destroying the do-not-resuscitate form, removing all do-
21 not-resuscitate identification from my person, and notifying my
22 attending physician of the revocation.

23 I give permission for this information to be given to EMS
24 personnel, doctors, nurses, and other health care providers. I

1 hereby state that I am making an informed decision and agree to a
2 do-not-resuscitate order.

3 _____ OR _____

4 Signature of Person

Signature of Representative

5 (Limited to an attorney-in-fact for
6 health care decisions acting under the
7 ~~Durable Power of Attorney Act~~ Oklahoma
8 Health Care Agent Act, a health care
9 proxy acting under the Oklahoma Advance
10 Directive Act or a guardian of the
11 person appointed under the Oklahoma
12 Guardianship and Conservatorship Act.)

13 This DNR consent form was signed in my
14 presence.

15 _____

16 Date

Signature of Witness

Address

17 _____

18 Signature of Witness

Address

19 BACK OF PAGE

20 CERTIFICATION OF PHYSICIAN

21 (This form is to be used by an attending physician only to
22 certify that an incapacitated person without a representative would
23 not have consented to the administration of cardiopulmonary
24 resuscitation in the event of cardiac or respiratory arrest. An

1 attending physician of an incapacitated person without a
2 representative must know by clear and convincing evidence that the
3 incapacitated person, when competent, decided on the basis of
4 information sufficient to constitute informed consent that such
5 person would not have consented to the administration of
6 cardiopulmonary resuscitation in the event of cardiac or respiratory
7 arrest. Clear and convincing evidence for this purpose shall
8 include oral, written, or other acts of communication between the
9 patient, when competent, and family members, health care providers,
10 or others close to the patient with knowledge of the patient's
11 desires.)

12 I hereby certify, based on clear and convincing evidence
13 presented to me, that I believe that _____

14 Name of Incapacitated Person
15 would not have consented to the administration of cardiopulmonary
16 resuscitation in the event of cardiac or respiratory arrest.

17 Therefore, in the event of cardiac or respiratory arrest, no chest
18 compressions, artificial ventilation, intubations, defibrillation,
19 or emergency cardiac medications are to be initiated.

20 _____
21 Physician's Signature/Date Physician's Name (PRINT)

22 _____
23 Physician's Address/Phone

24

1 C. Witnesses must be individuals who are eighteen (18) years of
2 age or older who are not legatees, devisees or heirs at law.

3 D. It is the intention of the Legislature that the preferred,
4 but not required, do-not-resuscitate form in Oklahoma shall be the
5 form set out in subsection B of this section.

6 SECTION 19. It being immediately necessary for the preservation
7 of the public peace, health or safety, an emergency is hereby
8 declared to exist, by reason whereof this act shall take effect and
9 be in full force from and after its passage and approval.

10
11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
12 03/01/2022 - DO PASS, As Amended.

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