

1 STATE OF OKLAHOMA

2 1st Session of the 60th Legislature (2025)

3 SENATE BILL 937

By: Howard

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5  
6 AS INTRODUCED

7 An Act relating to health care; creating the Uniform  
8 Health Care Decisions Act of 2025; providing short  
9 title; specifying conditions for capacity for certain  
10 purpose; stipulating extent of certain right;  
11 providing for certain presumptions of capacity;  
12 providing for rebuttal of certain capacity;  
13 prohibiting certain individuals from making specified  
14 findings; authorizing creation of certain health care  
15 instruction; requiring certain documentation;  
16 providing for revocation of health care instruction  
17 under certain condition; authorizing creation of  
18 certain power of attorney; providing for  
19 disqualification of agency under certain conditions;  
20 specifying effect of health care decision;  
21 stipulating requirements for adult witness; defining  
22 presence of witness; allowing certain power of  
23 attorney to include health care instruction;  
24 providing for codification; and providing an  
effective date.

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

20 SECTION 1. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 3105A.1 of Title 63, unless  
22 there is created a duplication in numbering, reads as follows:

23 This act shall be known and may be cited as the "Uniform Health  
24 Care Decisions Act of 2025".

1           SECTION 2.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 3105A.2 of Title 63, unless  
3 there is created a duplication in numbering, reads as follows:

4           A. An individual has capacity for the purpose of this act if  
5 the individual:

6           1. Is willing and able to communicate a decision independently  
7 or with appropriate services, technological assistance, supported  
8 decision-making, or other reasonable accommodation; and

9           2. In making or revoking:

10           a. a health care decision, understands the nature and  
11 consequences of the decision, including the primary  
12 risks and benefits of the decision,

13           b. a health care instruction, understands the nature and  
14 consequences of the instruction, including the primary  
15 risks and benefits of the choices expressed in the  
16 instruction, and

17           c. an appointment of an agent under a health care power  
18 of attorney or identification of a default surrogate,  
19 recognizes the identity of the individual being  
20 appointed or identified and understands the general  
21 nature of the relationship of the individual making  
22 the appointment or identification with the individual  
23 being appointed or identified.

1           B. The right of an individual who has capacity to make a  
2 decision about the individual's health care is not affected by  
3 whether the individual creates or revokes an advance health care  
4 directive.

5           SECTION 3.       NEW LAW       A new section of law to be codified  
6 in the Oklahoma Statutes as Section 3105A.3 of Title 63, unless  
7 there is created a duplication in numbering, reads as follows:

8           A. An individual is presumed to have capacity to make or revoke  
9 a health care decision, health care instruction, and power of  
10 attorney for health care unless:

11           1. A court has found the individual lacks capacity to do so; or

12           2. The presumption is rebutted under subsection B of this  
13 section.

14           B. Subject to the provisions of this act, a presumption under  
15 subsection A of this section may be rebutted by a finding that the  
16 individual lacks capacity:

17           1. Subject to subsection C of this section, made on the basis  
18 of a contemporaneous examination by any of the following:

19           a. a physician,

20           b. a psychologist licensed or otherwise authorized to  
21 practice in this state,

22           c. an individual with training and expertise in the  
23 finding of lack of capacity who is licensed or  
24 otherwise authorized to practice in this state as:

- (1) a physician assistant,
- (2) an Advanced Practice Registered Nurse, or
- (3) a social worker, or

d. a responsible health care professional not described in subparagraph a, b, or c of this paragraph if:

- (1) the individual about whom the finding is to be made is experiencing a health condition requiring a decision regarding health care treatment to be made promptly to avoid loss of life or serious harm to the health of the individual, and
- (2) an individual listed in subparagraph a, b, or c of this paragraph is not reasonably available;

2. Made in accordance with accepted standards of the profession and the scope of practice of the individual making the finding and to a reasonable degree of certainty; and

3. Documented in a record signed by the individual making the finding that includes an opinion of the cause, nature, extent, and probable duration of the lack of capacity.

C. The finding under subsection B of this section may not be made by:

- 1. A family member of the individual presumed to have capacity;
- 2. The cohabitant of the individual or a descendant of the cohabitant; or

1           3. The individual's surrogate, a family member of the  
2 surrogate, or a descendant of the surrogate.

3           D. If the finding under subsection B of this section was based  
4 on a condition the individual no longer has, or a responsible health  
5 care professional subsequently has good cause to believe the  
6 individual has capacity, the individual is presumed to have capacity  
7 unless a court finds the individual lacks capacity or the  
8 presumption is rebutted under subsection B of this section.

9           SECTION 4.           NEW LAW           A new section of law to be codified  
10 in the Oklahoma Statutes as Section 3105A.4 of Title 63, unless  
11 there is created a duplication in numbering, reads as follows:

12           A. An individual may create a health care instruction that  
13 expresses the individual's preferences for future health care,  
14 including preferences regarding:

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

22           B. A health care professional to whom an individual  
23 communicates or provides an instruction under subsection A of this  
24 section shall document the instruction and the date of the

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

7 C. A health care instruction made by an individual that  
8 conflicts with an earlier health care instruction made by the  
9 individual, including an instruction documented in a medical order,  
10 revokes the earlier instruction to the extent of the conflict.

11 D. A health care instruction may be in the same record as a  
12 power of attorney for health care.

13 SECTION 5. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 3105A.5 of Title 63, unless  
15 there is created a duplication in numbering, reads as follows:

16 A. An individual may create a power of attorney for health care  
17 to appoint an agent to make health care decisions for the  
18 individual.

19 B. An individual is disqualified from acting as agent for an  
20 individual who lacks capacity to make health care decisions if:

21 1. A court finds that the potential agent poses a danger to the  
22 individual's well-being, even if the court does not issue a  
23 restraining order against the potential agent; or  
24

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

7           C. A health care decision made by an agent is effective without  
8 judicial approval.

9           D. A power of attorney for health care must be in a record,  
10 signed by the individual creating the power, and signed by an adult  
11 witness who:

12           1. Reasonably believes the act of the individual to create the  
13 power of attorney is voluntary and knowing;

14           2. Is not:

15               a. the agent appointed by the individual,

16               b. the agent's spouse, domestic partner, or cohabitant,

17               or

18               c. if the individual resides or is receiving care in a  
19               nursing home or other residential care facility, the  
20               owner, operator, employee, or contractor of the  
21               nursing home or other residential care facility; and

22           3. Is present when the individual signs the power of attorney  
23 or when the individual represents that the power of attorney  
24 reflects the individual's wishes.

1 E. A witness under subsection D of this section is considered  
2 present if the witness and the individual are:

3 1. Physically present in the same location;

4 2. Using electronic means that allow for real-time audio and  
5 visual transmission and communication in real time to the same  
6 extent as if the witness and the individual were physically present  
7 in the same location; or

8 3. Able to speak to and hear each other in real time through  
9 audio connection if:

10 a. the identity of the individual is personally known to  
11 the witness, or

12 b. the witness is able to authenticate the identity of  
13 the individual by receiving accurate answers from the  
14 individual that enable the authentication.

15 F. A power of attorney for health care may include a health  
16 care instruction.

17 SECTION 6. This act shall become effective November 1, 2025.

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