

## LEGISLATIVE BILL 247

Approved by the Governor August 06, 2020

Introduced by Bolz, 29; Linehan, 39.

A BILL FOR AN ACT relating to health care; to amend sections 30-3402, 30-3405, 30-3406, 30-3408, and 30-3423, Reissue Revised Statutes of Nebraska; to adopt the Advance Mental Health Care Directives Act; to change and harmonize power of attorney for health care provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 15 of this act shall be known and may be cited as the Advance Mental Health Care Directives Act.

Sec. 2. (1) The Legislature finds that:

(a) Issues implicated in advance planning for end-of-life care are distinct from issues implicated in advance planning for mental health care;

(b) Mental illness can be episodic and include periods of incapacity which obstruct an individual's ability to give informed consent and impede the individual's access to mental health care;

(c) An acute mental health episode can induce an individual to refuse treatment when the individual would otherwise consent to treatment if the individual's judgment were unimpaired;

(d) An individual may lose capacity without meeting the criteria for civil commitment in Nebraska; and

(e) An individual with mental illness has the same right to plan in advance for treatment as an individual planning for end-of-life care.

(2) The purposes of the Advance Mental Health Care Directives Act are to:

(a) Facilitate advance planning to help (i) prevent unnecessary involuntary commitment and incarceration, (ii) improve patient safety and health, (iii) improve mental health care, and (iv) enable an individual to exercise control over such individual's mental health treatment; and

(b) Protect patient safety, autonomy, and health by allowing an individual to create an advance mental health care directive to instruct and direct the individual's mental health care.

Sec. 3. (1) The Legislature hereby declares that an advance mental health care directive can only accomplish the purposes stated in section 2 of this act if an individual may use an advance mental health care directive to:

(a) Set forth instructions for any foreseeable mental health care when the individual loses capacity to make decisions regarding such mental health care, including, but not limited to, consenting to inpatient mental health treatment, psychotropic medication, or electroconvulsive therapy;

(b) Dictate whether the directive is revocable during periods of incapacity and provide consent to treatment despite illness-induced refusals;

(c) Choose the standard by which the directive becomes active; and

(d) In compliance with the federal Health Insurance Portability and Accountability Act of 1996, include in the directive a release authorization form stating the names of persons to whom information regarding the mental health treatment of the principal may be disclosed during the time the directive is activated, including, but not limited to, health care professionals, mental health care professionals, family, friends, and other interested persons with whom treatment providers are allowed to communicate if the principal loses capacity.

(2) An individual with capacity has the right to control decisions relating to the individual's mental health care unless subject to a court order involving mental health care under any other provision of law.

Sec. 4. For purposes of the Advance Mental Health Care Directives Act:

(1) Activation means the point at which an advance mental health care directive is used as the basis for decisionmaking as provided in section 9 of this act;

(2) Attorney in fact means an individual designated under a power of attorney for health care to make mental health care decisions for a principal;

(3)(a) Capacity means having both (i) the ability to understand and appreciate the nature and consequences of mental health care decisions, including the benefits and risks of each, and alternatives to any proposed mental health treatment, and to reach an informed decision, and (ii) the ability to communicate in any manner such mental health care decision.

(b) An individual's capacity is evaluated in relation to the demands of a particular mental health care decision;

(4) Principal means an individual who is nineteen years of age or older with capacity who provides instructions, preferences, or both instructions and preferences for any foreseeable mental health care in an advance mental health care directive; and

(5) Relative means the spouse, child, parent, sibling, grandchild, or grandparent, by blood, marriage, or adoption, of an individual.

Sec. 5. (1) An advance mental health care directive shall:

(a) Be in writing;

(b) Be dated and signed by the principal or, subject to subsection (5) of

this section, another individual acting at the direction of the principal if the principal is physically unable to sign. The attorney in fact of the principal may not sign the directive for the principal;

(c) State whether the principal wishes to be able to revoke the directive at any time or whether the directive remains irrevocable during periods of incapacity. Failure to clarify whether the directive is revocable does not render it unenforceable. If the directive fails to state whether it is revocable or irrevocable, the principal may revoke it at any time;

(d) State that the principal affirms that the principal is aware of the nature of the directive and signs the directive freely and voluntarily; and

(e)(i) Be signed in the presence of a notary public who is not the attorney in fact of the principal; or

(ii) Be witnessed in writing by at least two disinterested adults as provided in subsections (4) and (5) of this section.

(2) An advanced mental health care directive shall be valid upon execution.

(3) To be irrevocable during periods of incapacity, the directive shall state that the directive remains irrevocable during periods of incapacity.

(4) A witness shall not be:

(a) The principal's attending physician or a member of the principal's mental health treatment team at the time of executing the directive;

(b) The principal's spouse, parent, child, grandchild, sibling, presumptive heir, or known devisee at the time of the witnessing;

(c) In a romantic or dating relationship with the principal;

(d) The attorney in fact of the principal or a person designated to make mental health care decisions for the principal; or

(e) The owner, operator, employee, or relative of an owner or operator of a treatment facility at which the principal is receiving care.

(5) Each witness shall attest that:

(a) The witness was present when the principal signed the directive or, if the principal was physically unable to sign the directive, when another individual signed the directive as provided in subdivision (1)(b) of this section;

(b) The principal did not appear incapacitated or under undue influence or duress when the directive was signed; and

(c) The principal presented identification or the witness personally knew the principal when the directive was signed.

(6) A principal may, in compliance with the federal Health Insurance Portability and Accountability Act of 1996, include in the directive a release authorization form stating the name of persons to whom information regarding the mental health treatment of the principal may be disclosed during the time the directive is activated, including, but not limited to, health care professionals, mental health care professionals, family, friends, and other interested persons with whom treatment providers are allowed to communicate if the principal loses capacity.

Sec. 6. (1) Except as provided in subsection (2) of this section, in an advance mental health care directive, a principal may issue instructions, preferences, or both instructions and preferences concerning the principal's mental health treatment. If the principal has designated an attorney in fact under a power of attorney for health care, the advance mental health care directive shall be binding on the principal's attorney in fact. The instructions and preferences may address matters including, but not limited to:

(a) Consent to or refusal of specific types of mental health treatment, such as inpatient mental health treatment, psychotropic medication, or electroconvulsive therapy. Consent to electroconvulsive therapy must be express;

(b) Treatment facilities and care providers;

(c) Alternatives to hospitalization if twenty-four-hour care is deemed necessary;

(d) Physicians who will provide treatment;

(e) Medications for psychiatric treatment;

(f) Emergency interventions, including seclusion, restraint, or medication;

(g) The provision of trauma-informed care and treatment;

(h) In compliance with the federal Health Insurance Portability and Accountability Act of 1996, a release authorization form stating the name of persons to whom information regarding the mental health treatment of the principal may be disclosed during the time the directive is activated, including persons who should be notified immediately of admission to an inpatient facility;

(i) Individuals who should be prohibited from visitation; and

(j) Other instructions or preferences regarding mental health care.

(2) A principal may not consent to or authorize an attorney in fact to consent to psychosurgery in a directive. If such consent or authorization is expressed in the directive, this does not revoke the entire directive, but such a provision is unenforceable.

Sec. 7. (1) An advance mental health care directive, including an irrevocable advance mental health care directive, shall remain in effect until it expires according to its terms or until it is revoked by the principal, whichever is earlier.

(2) A principal may revoke the directive even if the principal is incapacitated unless the principal has made the directive irrevocable during periods of incapacity pursuant to subsection (3) of section 5 of this act.

(3) A principal with capacity or a principal without capacity who did not make the directive irrevocable during periods of incapacity may revoke the directive by:

(a) A written statement revoking the directive; or

(b) A subsequent directive that revokes the original directive. If the subsequent directive does not revoke the original directive in its entirety, only inconsistent provisions in the original directive are revoked.

(4) When a principal with capacity consents to treatment that is different than the treatment requested in the directive or refuses treatment that the principal requested in the directive, this consent or refusal does not revoke the entire directive but is a waiver of the inconsistent provision.

Sec. 8. (1) A principal has a right to form a self-binding arrangement for mental health care in an advance mental health care directive. A self-binding arrangement allows the principal to obtain mental health treatment in the event that an acute mental health episode renders the principal incapacitated and induces the principal to refuse treatment.

(2) To provide advance consent to inpatient treatment despite the principal's illness-induced refusal, a principal shall, in such directive:

(a) Make the directive irrevocable pursuant to subsection (3) of section 5 of this act; and

(b) Consent to admission to an inpatient treatment facility.

(3) To provide advance consent to administration of psychotropic medication despite the principal's illness-induced refusal of medication, a principal shall, in such directive:

(a) Make the directive irrevocable pursuant to subsection (3) of section 5 of this act; and

(b) Consent to administration of psychotropic medication.

Sec. 9. (1) Unless a principal designates otherwise in the advance mental health care directive, a directive becomes active when the principal loses capacity. Activation is the point at which the directive shall be used as the basis for decisionmaking and shall dictate mental health treatment of the principal.

(2) The principal may designate in the directive an activation standard other than incapacity by describing the circumstances under which the directive becomes active.

Sec. 10. (1) Except as otherwise provided in subsection (2) of this section, a specific grant of authority to an attorney in fact to consent to the principal's inpatient mental health treatment or psychotropic medication is not required to convey authority to the attorney in fact to consent to such treatments. An attorney in fact may consent to such treatments for the principal if the principal's written grant of authority in the principal's advance mental health care directive is sufficiently broad to encompass these decisions.

(2) When an incapacitated principal refuses inpatient mental health treatment or psychotropic medication, the principal's attorney in fact only has the authority to consent to such treatments for the principal if the principal's directive is irrevocable and expressly authorizes the attorney in fact to consent to the applicable treatment. An attorney in fact shall only have the authority to consent to electroconvulsive therapy for the principal if the principal's directive is irrevocable and expressly authorizes the attorney in fact to consent to electroconvulsive therapy.

(3) An attorney in fact's decisions for the principal must be in good faith and consistent with the principal's instructions expressed in the principal's directive. If the directive fails to address an issue, the attorney in fact shall make decisions in accordance with the principal's instructions or preferences otherwise known to the attorney in fact. If the attorney in fact does not know the principal's instructions or preferences, the attorney in fact shall make decisions in the best interests of the principal.

(4) If the principal grants the attorney in fact authority to make decisions for the principal in circumstances in which the principal still has capacity, the principal's decisions when the principal has capacity shall nonetheless override the attorney in fact's decisions.

Sec. 11. (1) Despite activation, an advance mental health care directive, including an irrevocable directive, shall not prevail over contemporaneous preferences expressed by a principal who has capacity.

(2) If an individual has a power of attorney for health care and an advance mental health care directive and there is any conflict between the two documents, the advance mental health care directive controls with regard to any mental health care instructions or preferences.

Sec. 12. (1) If the principal forms a self-binding arrangement for treatment in an advance mental health care directive but then refuses admission to an inpatient treatment facility despite the directive's instructions to admit, the inpatient treatment facility shall respond as follows:

(a) The facility shall, as soon as practicable, obtain the informed consent of the principal's attorney in fact, if the principal has an attorney in fact;

(b) Two licensed physicians shall, within twenty-four hours after the principal's arrival at the facility, evaluate the principal to determine whether the principal has capacity and shall document in the principal's medical record a summary of findings, evaluations, and recommendations; and

(c) If the evaluating physicians determine the principal lacks capacity, the principal shall be admitted into the inpatient treatment facility pursuant to the principal's directive.

(2) After twenty-one days following the date of admission, if the principal has not regained capacity or has regained capacity but refuses to consent to remain for additional treatment, the facility shall dismiss the principal from the facility's care and the principal shall be released during daylight hours or to the care of an individual available only during nondaylight hours. This subsection does not apply if the principal is detained pursuant to involuntary commitment standards.

(3) A principal may specify in the advance mental health care directive a shorter amount of time than twenty-one days.

Sec. 13. If a principal with an irrevocable advance mental health care directive consenting to inpatient treatment refuses psychotropic medication through words or actions, psychotropic medication may only be administered by or under the immediate direction of a licensed psychiatrist, and only if:

(1) The principal expressly consented to psychotropic medication in the principal's irrevocable directive;

(2) The principal's attorney in fact, if the principal has an attorney in fact, consents to psychotropic medication; and

(3) Two of the following health care professionals recommend, in writing, treatment with the specific psychotropic medication: A licensed psychiatrist, physician, physician assistant, or advanced practice registered nurse or any other health care professional licensed to diagnose illnesses and prescribe drugs for mental health care.

Sec. 14. (1) A health care professional acting or declining to act, in accord with reasonable medical standards, in good faith reliance upon the principal's advance mental health care directive, and, if the principal has an attorney in fact, in reliance upon the decision made by a person whom the health care professional in good faith believes is the attorney in fact acting pursuant to the advance mental health care directive, shall not be subject to criminal prosecution, civil liability, or discipline for unprofessional conduct for so acting or declining to act.

(2) In the absence of knowledge of the revocation of an advance mental health care directive, a health care professional who acts or declines to act based upon the advance mental health care directive and in accord with reasonable medical standards shall not be subject to criminal prosecution, civil liability, or discipline for unprofessional conduct for so acting or declining to act.

(3) Nothing in the Advance Mental Health Care Directives Act shall limit the liability of an attorney in fact or a health care professional for a negligent act or omission.

Sec. 15. (1) An advance mental health care directive shall be in a form that complies with the Advance Mental Health Care Directives Act and may be in the form provided in this subsection.

ADVANCE MENTAL HEALTH CARE DIRECTIVE

I ....., being an adult nineteen years of age or older and of sound mind, freely and voluntarily make this directive for mental health care to be followed if it is determined that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health care. "Mental health care" includes, but is not limited to, treatment of mental illness with psychotropic medication, admission to and retention in a treatment facility for a period up to 21 days, or electroconvulsive therapy.

I understand that I may become incapable of giving or withholding informed consent for mental health care due to the symptoms of a diagnosed mental disorder. These symptoms may include, but not be limited to:

.....  
.....

PSYCHOTROPIC MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health care, my wishes regarding psychotropic medications, including classes of medications if appropriate, are as follows (check one or both of the following, if applicable):

I consent to the administration of the following medications:  
.....

I do not consent to the administration of the following medications:  
.....

Conditions or limitations, if any:  
.....

ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health care, my wishes regarding admission to and retention in a health care facility for mental health care are as follows (check one of the following, if applicable):

I consent to being admitted to a treatment facility for mental health care.

I do not consent to being admitted to a treatment facility for mental health care.

This directive cannot, by law, provide consent to retain me in a treatment facility for more than 21 days.

Conditions or limitations, if any:

.....  
.....

ELECTROCONVULSIVE THERAPY

If I become incapable of giving or withholding informed consent for mental health care, my wishes regarding electroconvulsive therapy are as follows (check one of the following, if applicable):

I consent to the administration of electroconvulsive therapy.

I do not consent to the administration of electroconvulsive therapy.

Conditions or limitations, if any:

.....  
.....

DESIGNATION OF IRREVOCABILITY DURING INCAPACITY

If I become incapable of giving or withholding informed consent for mental health care, my advance mental health care directive remains irrevocable during such period of incapacity:

Yes

No

If yes, the directive is irrevocable during such period of incapacity with regard to:

Admission and retention in a treatment facility for mental health care for up to 21 days;

Psychotropic medication as follows:

.....;

Electroconvulsive therapy; or

All of the above.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This directive will not be valid unless it is signed in the presence of a notary public or signed by two qualified witnesses who are either personally known to you or verify your identity and who are present when you sign or acknowledge your signature.

SELECTION OF PHYSICIAN

(OPTIONAL)

If it becomes necessary to determine if I have become incapable of giving or withholding informed consent for mental health care, I choose ..... of ..... (address of licensed physician) to be one of the two licensed physicians who will determine whether I am incapable. If that licensed physician is unavailable, that physician's designee shall serve as one of the two licensed physicians who will determine whether I am incapable.

ADDITIONAL REFERENCES OR INSTRUCTIONS

.....  
.....

Conditions or limitations, if any:

.....  
.....

This document will continue in effect until you revoke it as described below or until a date you designate in this document. If you wish to have this document terminate on a certain date, please indicate:

.....

(Date of expiration of directive)

.....

(Signature of Principal)

.....

(Printed Name of Principal)

.....

(Date signed)

THIS DOCUMENT MUST BE SIGNED IN THE PRESENCE OF WITNESSES

OR SIGNED IN THE PRESENCE OF A NOTARY PUBLIC. COMPLETE THE

APPROPRIATE PORTION WHICH FOLLOWS:

AFFIRMATION OF WITNESSES

We affirm that the principal is personally known to us or the principal presented identification, that the principal signed this advance mental health care directive in our presence or, if the principal was unable to sign the directive, the principal's designated representative signed the directive in

our presence, that the principal did not appear to be incapacitated or under duress or undue influence, and that neither of us is:

- (a) The principal's attending physician or a member of the principal's mental health treatment team;
- (b) The principal's spouse, parent, child, grandchild, sibling, presumptive heir, or known devisee at the time of the witnessing;
- (c) In a romantic or dating relationship with the principal;
- (d) The attorney in fact of the principal or a person designated to make mental health care decisions for the principal; or
- (e) The owner, operator, employee, or relative of an owner or operator of a treatment facility at which the principal is receiving care.

Witnessed By:

.....

(Signature of Witness)

.....

(Printed Name of Witness)

.....

(Date)

.....

(Signature of Witness)

.....

(Printed Name of Witness)

.....

(Date)

OR COMPLETE THE FOLLOWING PORTION IF THIS DOCUMENT

IS SIGNED IN THE PRESENCE OF A NOTARY PUBLIC

State of Nebraska,)

) ss.

County of ..... )

On this ..... day of ..... 20...., before me, ....., a notary public in and for ..... County, personally came ....., personally to me known to be the identical person whose name is affixed to the above advance mental health care directive as principal, and I declare that such person appears in sound mind and not under duress or undue influence, that such person acknowledges the execution of the same to be such person's voluntary act and deed, and that I am not the attorney in fact of the principal designated by any power of attorney for health care.

Witness my hand and notarial seal at ..... in such county the day and year last above written.

Seal

Signature of Notary Public

NOTICE TO PERSON MAKING AN ADVANCE MENTAL HEALTH CARE DIRECTIVE

This is an important legal document. It creates an advance mental health care directive. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about mental health care, including administration of psychotropic medication, short-term (up to 21 days) admission to a treatment facility, and use of electroconvulsive therapy. The instructions that you include in this advance mental health care directive will be followed only if you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments.

If you have an attorney in fact appointed under a power of attorney for health care, your attorney in fact has a duty to act consistent with your desires as stated in this document or, if your desires are not stated or otherwise made known to the attorney in fact, to act in a manner consistent with what your attorney in fact in good faith believes to be in your best interest. The person has the right to withdraw from acting as your attorney in fact at any time.

You have the right to revoke this document in whole or in part at any time you have been determined to be capable of giving or withholding informed consent for mental health care. A revocation is effective when it is communicated to your attending health care professional in writing and is signed by you. The revocation may be in a form similar to the following:

REVOCATION

I, ....., knowingly and voluntarily revoke my advance mental health care directive as indicated (check one of the following):

[ ] I revoke my entire directive.

[ ] I revoke the following portion or portions of my directive:

.....  
.....

.....

(Signature of Principal)

.....

(Printed Name of Principal)

.....

(Date)

EVALUATION BY HEALTH CARE PROFESSIONAL

(OPTIONAL)

I, ....., have evaluated the principal and determined that the principal is capable of giving or withholding informed consent for mental health care.

.....

(Signature of health care professional)

.....

(Printed Name of health care professional)

.....

(Date)

(2) The Department of Health and Human Services may adopt and promulgate rules and regulations to provide information to the public regarding the Advance Mental Health Care Directives Act. The rules and regulations may include information relating to the need to review and update an advance mental health care directive in a timely manner and the creation of a wellness recovery action plan upon dismissal from a treatment facility for ongoing mental health issues and rehabilitation goals. The department shall publish the form in this section on its web site for use by the public.

Sec. 16. Section 30-3402, Reissue Revised Statutes of Nebraska, is amended to read:

30-3402 For purposes of sections 30-3401 to 30-3432:

(1) Adult shall mean any person who is nineteen years of age or older or who is or has been married;

(2) Attending physician shall mean the physician, selected by or assigned to a principal, who has primary responsibility for the care and treatment of such principal;

(3) Attorney in fact shall mean an adult properly designated and authorized under sections 30-3401 to 30-3432 to make health care decisions for a principal pursuant to a power of attorney for health care and shall include a successor attorney in fact;

(4) Health care shall mean any treatment, procedure, or intervention to diagnose, cure, care for, or treat the effects of disease, injury, and degenerative conditions. Health care shall include mental health care;

(5) Health care decision shall include consent, refusal of consent, or withdrawal of consent to health care. Health care decision shall not include (a) the withdrawal or withholding of routine care necessary to maintain patient comfort, (b) the withdrawal or withholding of the usual and typical provision of nutrition and hydration, or (c) the withdrawal or withholding of life-sustaining procedures or of artificially administered nutrition or hydration, except as provided by sections 30-3401 to 30-3432;

(6) Health care provider shall mean an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or professional practice and shall include all facilities defined in the Health Care Facility Licensure Act;

(7) Except as otherwise provided in section 4 of this act for an advance mental health care directive, incapable ~~incapable~~ shall mean the inability to understand and appreciate the nature and consequences of health care decisions, including the benefits of, risks of, and alternatives to any proposed health care or the inability to communicate in any manner an informed health care decision;

(8) Life-sustaining procedure shall mean any medical procedure, treatment, or intervention that (a) uses mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function and (b) when applied to a person suffering from a terminal condition or who is in a persistent vegetative state, serves only to prolong the dying process. Life-sustaining procedure shall not include routine care necessary to maintain patient comfort or the usual and typical provision of nutrition and hydration;

(9) Mental health care shall include, but not be limited to, mental health care and treatment expressly provided for in the Advance Mental Health Care Directives Act;

(10) (9) Persistent vegetative state shall mean a medical condition that, to a reasonable degree of medical certainty as determined in accordance with currently accepted medical standards, is characterized by a total and irreversible loss of consciousness and capacity for cognitive interaction with the environment and no reasonable hope of improvement;

(11) (10) Power of attorney for health care shall mean a power of attorney executed in accordance with sections 30-3401 to 30-3432 which authorizes a designated attorney in fact to make health care decisions for the principal when the principal is incapable;

(12) (11) Principal shall mean an adult who, when competent, confers upon another adult a power of attorney for health care;

(13) (12) Reasonably available shall mean that a person can be contacted with reasonable efforts by an attending physician or another person acting on behalf of the attending physician;

(14) (13) Terminal condition shall mean an incurable and irreversible medical condition caused by injury, disease, or physical illness which, to a reasonable degree of medical certainty, will result in death regardless of the continued application of medical treatment including life-sustaining procedures; and

(15) (14) Usual and typical provision of nutrition and hydration shall mean delivery of food and fluids orally, including by cup, eating utensil, bottle, or drinking straw.

Sec. 17. Section 30-3405, Reissue Revised Statutes of Nebraska, is amended to read:

30-3405 (1)(a) (1) The following shall not qualify to witness a power of attorney for health care: Any person who at the time of witnessing is the principal's spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of the witnessing, attending physician, mental health treatment team member, romantic or dating partner, or attorney in fact; or an employee of a life or health insurance provider for the principal.

(b) No more than one witness may be an administrator or employee of a health care provider who is caring for or treating the principal.

(2) Each witness shall make the written declaration in substantially the form prescribed in section 30-3408.

Sec. 18. Section 30-3406, Reissue Revised Statutes of Nebraska, is amended to read:

30-3406 None of the following may serve as an attorney in fact:

(1) The attending physician or a member of the mental health treatment team of the principal;

(2) An employee of the attending physician or a member of the mental health treatment team of the principal who is unrelated to the principal by blood, marriage, or adoption;

(3) A person unrelated to the principal by blood, marriage, or adoption who is an owner, operator, or employee of a health care provider in or of which the principal is a patient or resident; and

(4) A person unrelated to the principal by blood, marriage, or adoption if, at the time of the proposed designation, he or she is presently serving as an attorney in fact for ten or more principals.

Sec. 19. Section 30-3408, Reissue Revised Statutes of Nebraska, is amended to read:

30-3408 (1) A power of attorney for health care executed on or after September 9, 1993, shall be in a form which complies with sections 30-3401 to 30-3432 and may be in the form provided in this subsection.

POWER OF ATTORNEY FOR HEALTH CARE

I appoint ....., whose address is ....., and whose telephone number is ....., as my attorney in fact for health care. I appoint ....., whose address is ....., and whose telephone number is ....., as my successor attorney in fact for health care. I authorize my attorney in fact appointed by this document to make health care decisions for me when I am determined to be incapable of making my own health care decisions. I have read the warning which accompanies this document and understand the consequences of executing a power of attorney for health care.

I direct that my attorney in fact comply with the following instructions or limitations: .....

I direct that my attorney in fact comply with the following instructions on life-sustaining treatment: (optional) .....

I direct that my attorney in fact comply with the following instructions on artificially administered nutrition and hydration: (optional) .....

I HAVE READ THIS POWER OF ATTORNEY FOR HEALTH CARE. I UNDERSTAND THAT IT ALLOWS ANOTHER PERSON TO MAKE LIFE AND DEATH DECISIONS FOR ME IF I AM INCAPABLE OF MAKING SUCH DECISIONS. I ALSO UNDERSTAND THAT I CAN REVOKE THIS POWER OF ATTORNEY FOR HEALTH CARE AT ANY TIME BY NOTIFYING MY ATTORNEY IN FACT, MY PHYSICIAN, OR THE FACILITY IN WHICH I AM A PATIENT OR RESIDENT. I ALSO UNDERSTAND THAT I CAN REQUIRE IN THIS POWER OF ATTORNEY FOR HEALTH CARE THAT THE FACT OF MY INCAPACITY IN THE FUTURE BE CONFIRMED BY A SECOND PHYSICIAN.

.....



(Signature of person making designation/date)

DECLARATION OF WITNESSES

We declare that the principal is personally known to us, that the principal signed or acknowledged his or her signature on this power of attorney for health care in our presence, that the principal appears to be of sound mind and not under duress or undue influence, and that neither of us nor the principal's attending physician is the person appointed as attorney in fact by this document.

Witnessed By:

.....  
(Signature of Witness/Date) (Printed Name of Witness)

.....  
(Signature of Witness/Date) (Printed Name of Witness)

OR

State of Nebraska,)

)ss.

County of ..... )

On this ..... day of ..... 20...., before me, ....., a notary public in and for ..... County, personally came ....., personally to me known to be the identical person whose name is affixed to the above power of attorney for health care as principal, and I declare that he or she appears in sound mind and not under duress or undue influence, that he or she acknowledges the execution of the same to be his or her voluntary act and deed, and that I am not the attorney in fact or successor attorney in fact designated by this power of attorney for health care.

Witness my hand and notarial seal at ..... in such county the day and year last above written.

Seal

Signature of Notary Public

(2) A power of attorney for health care may be included in a durable power of attorney drafted under the Nebraska Uniform Power of Attorney Act or in any other form if the power of attorney for health care included in such durable power of attorney or any other form fully complies with the terms of section 30-3404.

(3) A power of attorney for health care executed prior to January 1, 1993, shall be effective if it fully complies with the terms of section 30-3404.

(4) A power of attorney for health care which is executed in another state and is valid under the laws of that state shall be valid according to its terms.

(5) A power of attorney for health care may include an advance mental health care directive under the Advance Mental Health Care Directives Act.

Sec. 20. Section 30-3423, Reissue Revised Statutes of Nebraska, is amended to read:

30-3423 (1) An attorney in fact shall not be guilty of any criminal offense, subject to any civil liability, or in violation of any professional oath or code of ethics or conduct for any action taken in good faith pursuant to a power of attorney for health care or an advance mental health care directive under the Advance Mental Health Care Directives Act.

(2) No attending physician or health care provider acting or declining to act in reliance upon the decision made by a person whom the attending physician or health care provider in good faith believes is the attorney in fact for health care shall be subject to criminal prosecution, civil liability, or professional disciplinary action. Nothing in sections 30-3401 to 30-3432, however, shall limit the liability of an attending physician or health care provider for a negligent act or omission in connection with the medical diagnosis, treatment, or care of the principal.

Sec. 21. Original sections 30-3402, 30-3405, 30-3406, 30-3408, and 30-3423, Reissue Revised Statutes of Nebraska, are repealed.