

HOUSE BILL NO. HB0048

Wyoming Health Care Decisions Act.

Sponsored by: Joint Labor, Health and Social Services
Interim Committee

A BILL

for

1 AN ACT relating to the Wyoming Health Care Decisions Act;
2 amending terminology relating to health care providers and
3 physicians; adding persons who may not be witnesses for a
4 power of attorney for health care as specified; amending
5 the optional form for advance health care directives as
6 specified; clarifying that a valid advance health care
7 directive preempts decisions by a surrogate; amending
8 provisions regarding decisions by a class of persons acting
9 as health care surrogate; providing that a guardian's
10 authority is as provided in existing guardianship statutes
11 as specified; clarifying a health care providers duty to
12 communicate with a patient as specified; amending civil and
13 criminal immunity of agent and surrogates as specified;
14 and providing for an effective date.

15

16 *Be It Enacted by the Legislature of the State of Wyoming:*

1

2 **Section 1.** W.S. 35-22-402(a)(xx)(D), 35-22-403(b) and
3 (e), 35-22-404(c), 35-22-406(a), (b)(intro), (e), (h) and
4 (k), 35-22-407 by creating a new subsection (e),
5 35-22-408(a) through (c) and (e), 35-22-410(b) and
6 35-22-412(b) are amended to read:

7

8 **35-22-402. Definitions.**

9

10 (a) As used in this act:

11

12 (xx) "Surrogate" means an adult individual or
13 individuals who:

14

15 (D) Are identified by the supervising
16 primary health care provider in accordance with this act as
17 the person or persons who are to make those decisions in
18 accordance with this act.

19

20 **35-22-403. Advance health care directives.**

21

22 (b) An adult or emancipated minor may execute a power
23 of attorney for health care, which may authorize the agent
24 to make any health care decision the principal could have

1 made while having capacity. The power must be in writing
2 and signed by the principal or by another person in the
3 principal's presence and at the principal's expressed
4 direction. The power remains in effect notwithstanding the
5 principal's later incapacity and may include individual
6 instructions. Unless related to the principal by blood,
7 marriage or adoption, an agent may not be an owner,
8 operator or employee of a residential or community care
9 facility at which the principal is receiving care. The
10 durable power of attorney must ~~either be sworn and~~ be
11 acknowledged before a notary public or must be signed by at
12 least two (2) witnesses, each of whom witnessed either the
13 signing of the instrument by the principal or the
14 principal's acknowledgement of the signature or of the
15 instrument, each witness making the following declaration
16 in substance:

17

18 I declare under penalty of perjury under the laws of
19 Wyoming that the person who signed or acknowledged this
20 document is ~~personally~~ known to me to be the principal,
21 that the principal signed or acknowledged this document in
22 my presence, that the principal appears to be of sound mind
23 and under no duress, fraud or undue influence, that I am
24 not the person appointed as attorney-in-fact by this

1 document, and that I am not a treating health care
2 provider, an employee of a treating health care provider,
3 the operator of a community care facility, an employee of
4 an operator of a community care facility, the operator of a
5 residential care facility, nor an employee of an operator
6 of a residential care facility.

7

8 (e) Unless otherwise specified in a written advance
9 health care directive, a determination that an individual
10 lacks or has recovered capacity, or that another condition
11 exists that affects an individual instruction or the
12 authority of an agent, shall be made by the primary
13 physician, but the ~~supervising~~ health care provider may
14 make the decision if the primary physician is unavailable.

15

16 **35-22-404. Revocation of advance health care**
17 **directive.**

18

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

24

1 **35-22-406. Decisions by surrogate.**

2

3 (a) If a valid advance health care directive does not
4 exist, a surrogate may make a health care decision for a
5 patient who is an adult or emancipated minor if the patient
6 has been determined by the primary physician or the
7 ~~supervising~~primary health care provider to lack capacity
8 and no agent or guardian has been appointed or the agent or
9 guardian is not reasonably available.

10

11 (b) An adult or emancipated minor may designate any
12 individual to act as surrogate by personally informing the
13 ~~supervising~~primary health care provider. In the absence of
14 a designation, or if the designee is not reasonably
15 available, it is suggested that any member of the following
16 classes of the patient's family who is reasonably
17 available, in descending order of priority, may act as
18 surrogate:

19

20 (e) If more than one (1) member of a class assumes
21 authority to act as surrogate, and ~~they~~the other members
22 of the class do not agree on a health care decision and the
23 ~~supervising~~primary health care provider is so informed,
24 the ~~supervising~~primary health care provider shall comply

1 with the decision of a majority of the members of that
2 class who have communicated their views to the provider. ~~If~~
3 ~~the class is evenly divided concerning the health care~~
4 ~~decision and the supervising health care provider is so~~
5 ~~informed, that class and all individuals having lower~~
6 ~~priority are disqualified from making the decision.~~

7
8 (h) The patient at any time may disqualify another,
9 including a member of the individual's family, from acting
10 as the individual's surrogate by a signed writing or by
11 personally informing the ~~supervising~~ primary health care
12 provider of the disqualification.

13
14 (k) A ~~supervising~~ primary health care provider may
15 require an individual claiming the right to act as
16 surrogate for a patient to provide a written declaration
17 under penalty of perjury stating facts and circumstances
18 reasonably sufficient to establish the claimed authority.

19
20 **35-22-407. Decisions by guardian.**

21
22 (e) A guardian's authority to make health care
23 decisions for the ward shall be as provided in W.S.

1 3-2-201(a)(iii), subject to the restrictions in W.S.
2 3-2-202 and 35-22-407(b).

3

4 **35-22-408. Obligations of health care provider.**

5

6 (a) Before implementing a health care decision made
7 for a patient who is able to comprehend, a ~~supervising~~
8 primary health care provider, ~~if possible~~, shall promptly
9 communicate to the patient the decision made and the
10 identity of the person making the decision.

11

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

20

21 (c) ~~A supervising health care provider~~ The primary
22 physician who makes or is informed of a determination that
23 a patient lacks or has recovered capacity, or that another
24 condition exists which affects an individual instruction or

1 the authority of an agent, guardian or surrogate, shall
2 promptly record the determination in the patient's health
3 care record and communicate the determination to the
4 patient, if possible, and to any person then authorized to
5 make health care decisions for the patient.

6
7 (e) A health care provider may decline to comply with
8 an individual instruction or health care decision for
9 reasons of conscience. A health care institution may
10 decline to comply with an individual instruction or health
11 care decision if the instruction or decision is contrary to
12 a written policy of the institution which is expressly
13 based on reasons of conscience and if the policy was timely
14 communicated to the patient or to a person then authorized
15 to make health care decisions for the patient. The
16 provider or institution shall deliver the written policy
17 upon receipt of the patient's advance directive that may
18 conflict with the policy or upon notice from the
19 ~~supervising~~primary health care provider that the patient's
20 instruction or decision may be in conflict with the health
21 care institution's policy.

22

23 **35-22-410. Immunities.**

24

1 (b) An individual acting in good faith as agent or
2 surrogate under this act is not subject to civil liability
3 or criminal ~~liability~~ prosecution or to discipline by a
4 licensing board for unprofessional conduct for health care
5 decisions made in good faith.

6

7 **35-22-412. Capacity.**

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9 (b) An individual is presumed to have capacity to
10 make a health care decision, to give or revoke an advance
11 health care directive, and to designate or disqualify a
12 surrogate unless the primary physician has certified that
13 the patient lacks such capacity.

14

15 **Section 2.** W.S. 35-22-402(a)(xix), 35-22-405 and
16 35-22-407(a), (c) and (d) are repealed.

17

18 **Section 3.** This act is effective July 1, 2007.

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20

(END)