

HOUSE BILL NO. HB0107

Uniform health care decisions.

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

A BILL

for

1 AN ACT relating to health care; creating a uniform health
2 care decisions act; authorizing and prescribing sample
3 forms for advance health care directives; authorizing and
4 prescribing sample forms for powers of attorney for health
5 care; prescribing duties of health care surrogates and
6 health care providers as specified; providing for immunity,
7 monetary damages and injunctive relief; providing
8 statements of legislative intent; repealing the durable
9 power of attorney for health care statute and living will
10 statute; and providing for an effective date.

11

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

13

14 **Section 1.** W.S. 35-22-401 through 35-22-417 are
15 created to read:

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ARTICLE 4

WYOMING HEALTH CARE DECISIONS ACT

35-22-401. Short title.

This act may be cited as the "Wyoming Health Care Decisions Act."

35-22-402. Definitions.

(a) As used in this act:

(i) "Advance health care directive" means an individual instruction or a power of attorney for health care, or both;

(ii) "Agent" means an individual designated in a power of attorney for health care to make a health care decision for the individual granting the power;

(iii) "Artificial nutrition and hydration" means supplying food and water through a conduit, such as a tube or an intravenous line where the recipient is not required to chew or swallow voluntarily, including, but not limited

1 to, nasogastric tubes, gastrostomies, jejunostomies and
2 intravenous infusions. Artificial nutrition and hydration
3 does not include assisted feeding, such as spoon or bottle
4 feeding;

5

6 (iv) "Capacity" means an individual's ability to
7 understand the significant benefits, risks and alternatives
8 to proposed health care and to make and communicate a
9 health care decision;

10

11 (v) "Community care facility" means a public or
12 private facility responsible for the day-to-day care of
13 persons with disabilities;

14

15 (vi) "Emancipated minor" means a minor who has
16 become emancipated as provided in W.S. 14-1-201 through
17 14-1-206;

18

19 (vii) "Guardian" means a judicially appointed
20 guardian or conservator having authority to make a health
21 care decision for an individual;

22

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

4
5 (ix) "Health care decision" means a decision
6 made by an individual or the individual's agent, guardian,
7 or surrogate, regarding the individual's health care,
8 including:

9
10 (A) Selection and discharge of health care
11 providers and institutions;

12
13 (B) Approval or disapproval of diagnostic
14 tests, surgical procedures, programs of medication and
15 orders not to resuscitate; and

16
17 (C) Directions to provide, withhold or
18 withdraw artificial nutrition and hydration and all other
19 forms of health care.

20
21 (x) "Health care institution" means an
22 institution, facility or agency licensed, certified or
23 otherwise authorized or permitted by law to provide health
24 care in the ordinary course of business;

1

2 (xi) "Primary health care provider" means any
3 person licensed under the Wyoming statutes and practicing
4 within the scope of that license as a licensed physician,
5 licensed physician's assistant or licensed advanced
6 practitioner of nursing;

7

8 (xii) "Individual instruction" means an
9 individual's direction concerning a health care decision
10 for the individual;

11

12 (xiii) "Physician" means an individual
13 authorized to practice medicine under the Wyoming Medical
14 Practice Act;

15

16 (xiv) "Power of attorney for health care" means
17 the designation of an agent to make health care decisions
18 for the individual granting the power;

19

20 (xv) "Primary physician" means a physician
21 designated by an individual or the individual's agent,
22 guardian or surrogate, to have primary responsibility for
23 the individual's health care or, in the absence of a
24 designation or if the designated physician is not

1 reasonably available, a physician who undertakes the
2 responsibility;

3

4 (xvi) "Reasonably available" means able to be
5 contacted with a level of diligence appropriate to the
6 seriousness and urgency of a patient's health care needs
7 and willing and able to act in a timely manner considering
8 the urgency of the patient's health care needs;

9

10 (xvii) "Residential care facility" means a
11 public or private facility providing for the residential
12 and health care needs of the elderly or persons with
13 disabilities or chronic mental illness;

14

15 (xviii) "State" means a state of the United
16 States, the District of Columbia, the Commonwealth of
17 Puerto Rico or a territory or insular possession subject to
18 the jurisdiction of the United States;

19

20 (xix) "Supervising health care provider" means
21 the health care provider who has undertaken primary
22 responsibility for an individual's health care;

23

1 (xx) "Surrogate" means an adult individual or
2 individuals who:

3

4 (A) Have capacity;

5

6 (B) Are reasonably available;

7

8 (C) Are willing to make health care
9 decisions, including decisions to initiate, refuse to
10 initiate, continue or discontinue the use of a life
11 sustaining procedure on behalf of a patient who lacks
12 capacity; and

13

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

18

19 (xxi) "This act" means W.S. 35-22-401 through
20 35-22-417.

21

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

23

1 (a) An adult or emancipated minor may give an
2 individual instruction. The instruction may be oral or
3 written. The instruction may be limited to take effect only
4 if a specified condition arises.

5
6 (b) An adult or emancipated minor may execute a power
7 of attorney for health care, which may authorize the agent
8 to make any health care decision the principal could have
9 made while having capacity. The power must be in writing
10 and signed by the principal or by another person in the
11 principal's presence and at the principal's expressed
12 direction. The power remains in effect notwithstanding the
13 principal's later incapacity and may include individual
14 instructions. Unless related to the principal by blood,
15 marriage or adoption, an agent may not be an owner,
16 operator or employee of a residential or community care
17 facility at which the principal is receiving care. The
18 durable power of attorney must either be sworn and
19 acknowledged before a notary public or must be signed by at
20 least two (2) witnesses, each of whom witnessed either the
21 signing of the instrument by the principal or the
22 principal's acknowledgement of the signature or of the
23 instrument, each witness making the following declaration
24 in substance:

1

2

I declare under penalty of perjury under the laws

3

of Wyoming that the person who signed or

4

acknowledged this document is personally known to

5

me to be the principal, that the principal signed

6

or acknowledged this document in my presence,

7

that the principal appears to be of sound mind

8

and under no duress, fraud or undue influence,

9

that I am not the person appointed as attorney-

10

in-fact by this document, and that I am not a

11

treating health care provider, an employee of a

12

treating health care provider, the operator of a

13

community care facility, an employee of an

14

operator of a community care facility, the

15

operator of a residential care facility, nor an

16

employee of an operator of a residential care

17

facility.

18

19

(c) None of the following shall be used as a witness

20

for a power of attorney for health care:

21

22

(i) A treating health care provider or employee

23

of the provider;

24

1 (ii) The attorney-in-fact nominated in the
2 writing;

3

4 (iii) The operator of a community care facility
5 or employee of the operator or facility;

6

7 (iv) The operator of a residential care facility
8 or employee of the operator or facility.

9

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

15

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

22

23 (f) An agent shall make a health care decision in
24 accordance with the principal's advance health care

1 directive and other wishes to the extent known to the
2 agent. Otherwise, the agent shall make the decision in
3 accordance with the agent's determination of the
4 principal's best interest. In determining the principal's
5 best interest, the agent shall consider the principal's
6 personal values to the extent known to the agent.

7

8 (g) A health care decision made by an agent for a
9 principal is effective without judicial approval.

10

11 (h) A written advance health care directive may
12 include the individual's nomination of a guardian of the
13 person.

14

15 (j) An advance health care directive is valid for
16 purposes of this act if it complied with the applicable law
17 at the time of execution or communication.

18

19 **35-22-404. Revocation of advance health care**
20 **directive.**

21

22 (a) An individual with capacity may revoke the
23 designation of an agent only by a signed writing.

24

1 (b) An individual with capacity may revoke all or
2 part of an advance health care directive, other than the
3 designation of an agent, at any time and in any manner that
4 communicates an intent to revoke done in the presence of
5 two (2) competent persons. Any revocation that is not in
6 writing shall be documented in writing, signed and dated by
7 both witnesses. This writing shall be made a part of the
8 medical record.

9

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

15

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

20

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

24

1 **35-22-405. Optional form.**

2

3 (a) The following form may, but need not, be used to
4 create an advance health care directive. The other sections
5 of this act govern the effect of this or any other writing
6 used to create an advance health care directive. An
7 individual may complete or modify all or any part of the
8 following form:

9

10 ADVANCE HEALTH CARE DIRECTIVE

11 Explanation

12

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

21

22 Part 1 of this form is a power of attorney for health care.
23 Part 1 lets you name another individual as agent to make
24 health care decisions for you if you become incapable of

1 making your own decisions or if you want someone else to
2 make those decisions for you now even though you are still
3 capable.

4

5 You may also name an alternate agent to act for you if your
6 first choice is not willing, able or reasonably available
7 to make decisions for you. Unless related to you, your
8 agent may not be an owner, operator or employee of a
9 residential or community care facility at which you are
10 receiving care.

11

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

20

21 (a) Consent or refuse consent to any care, treatment,
22 service or procedure to maintain, diagnose or otherwise
23 affect a physical or mental condition;

24

1 (b) Select or discharge health care providers and
2 institutions;

3

4 (c) Approve or disapprove diagnostic tests, surgical
5 procedures, programs of medication and orders not to
6 resuscitate; and

7

8 (d) Direct the provision, withholding or withdrawal
9 of artificial nutrition and hydration and all other forms
10 of health care.

11

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

20

21 Part 3 of this form lets you express an intention to donate
22 your bodily organs and tissues following your death.

1 Part 4 of this form lets you designate a supervising health
 2 care provider to have primary responsibility for your
 3 health care.

4

5 After completing this form, sign and date the form at the
 6 end. This form must either be signed before a notary public
 7 or, in the alternative, be witnessed by two (2) witnesses.

8 Give a copy of the signed and completed form to your
 9 physician, to any other health care providers you may have,
 10 to any health care institution at which you are receiving

11 care, and to any health care agents you have named. You
 12 should talk to the person you have named as agent to make
 13 sure that he or she understands your wishes and is willing

14 to take the responsibility.

15

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

18

19 * * * * *

20

21 PART 1

22 POWER OF ATTORNEY FOR HEALTH CARE

23

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

4

5

6 (name of individual you choose as agent)

7

8

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

10

11

12 (home phone)

(work phone)

13

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

18

19

20 (name of individual you choose as first alternate agent)

21

22

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

24

1

2

(home phone)

(work phone)

3

4

OPTIONAL: If I revoke the authority of my agent and first

5

alternate agent or if neither is willing, able or

6

reasonably available to make a health care decision for me,

7

I designate as my second alternate agent:

8

9

10

(name of individual you choose as second alternate agent)

11

12

13

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

14

15

16

(home phone)

(work phone)

17

18

(2) AGENT'S AUTHORITY: My agent is authorized to make all

19

health care decisions for me, including decisions to

20

provide, withhold or withdraw artificial nutrition and

21

hydration and all other forms of health care to keep me

22

alive, except as I state here:

23

24

1

2 (Add additional sheets if needed.)

3

4 (3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's
5 authority becomes effective when my supervising health care
6 provider determines that I lack the capacity to make my own
7 health care decisions unless I initial the following box.
8 If I initial this box [], my agent's authority to make
9 health care decisions for me takes effect immediately.

10

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

20

21 (5) NOMINATION OF GUARDIAN: If a guardian of my person
22 needs to be appointed for me by a court, (please initial
23 one):

24

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

8

9 (b) Choice To Prolong Life

10

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

13

14 (7) ARTIFICIAL NUTRITION AND HYDRATION: Artificial
15 nutrition and hydration must be provided, withheld or
16 withdrawn in accordance with the choice I have made in
17 paragraph (6) unless I initial the following box. If I
18 initial this box , artificial nutrition must be provided
19 regardless of my condition and regardless of the choice I
20 have made in paragraph (6). If I initial this box ,
21 artificial hydration must be provided regardless of my
22 condition and regardless of the choice I have made in
23 paragraph (6).

24

1 (8) RELIEF FROM PAIN: Except as I state in the following
 2 space, I direct that treatment for alleviation of pain or
 3 discomfort be provided at all times:

4
 5 _____
 6 _____

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

12
 13 _____
 14 _____

15 (Add additional sheets if needed.)

16
 17 PART 3
 18 DONATION OF ORGANS AT DEATH

19
 20 (OPTIONAL)

21
 22 (10) Upon my death (initial applicable box):

23
 24 [] (a) I give my body, or

1

2 [] (b) I give any needed organs, tissues or parts,
3 or

4

5 [] (c) I give the following organs, tissues or
6 parts only

7

8



9

10 (d) My gift is for the following purposes (strike any
11 of the following you do not want):

12

13 (i) Any purpose authorized by law;

14

15 (ii) Transplantation;

16

17 (iii) Therapy;

18

19 (iv) Research;

20

21 (v) Medical education.

22

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

1

2

3 (name of physician)

4

5

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

7

8

9 (phone)

10

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

15

16

17 (name of physician)

18

19

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

21

22

23 (phone)

24

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* * * * *

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

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

_____ (date)

(sign your name)

_____ (address)

(print your name)

(city) (state)

(Optional) SIGNATURES OF WITNESSES:

First witness

(print name)

(address)

1 (signature of witness)

2

3

4 (date)

5

6 Second witness

7

8

9 (print name)

(address)

10

11

12 (signature of witness)

13

14

15 (date)

16

17

18 (Signature of notary public in lieu of witnesses)

19

20

21 (date)

22

23 **35-22-406. Decisions by surrogate.**

24

1 (a) A surrogate may make a health care decision for a
2 patient who is an adult or emancipated minor if the patient
3 has been determined by the supervising health care provider
4 to lack capacity and no agent or guardian has been
5 appointed or the agent or guardian is not reasonably
6 available.

7

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

16

17 (i) The spouse, unless legally separated;

18

19 (ii) An adult child;

20

21 (iii) A parent;

22

23 (iv) A grandparent;

24

1 (v) An adult brother or sister;

2

3 (vi) An adult grandchild.

4

5 (c) If none of the individuals eligible to act as
6 surrogate under subsection (b) of this section is
7 reasonably available, an adult who has exhibited special
8 care and concern for the patient, who is familiar with the
9 patient's personal values, and who is reasonably available
10 may act as surrogate.

11

12 (d) A surrogate shall communicate his assumption of
13 authority as promptly as practicable to the members of the
14 patient's family specified in subsection (b) of this
15 section who can be readily contacted.

16

17 (e) If more than one (1) member of a class assumes
18 authority to act as surrogate, and they do not agree on a
19 health care decision and the supervising health care
20 provider is so informed, the supervising health care
21 provider shall comply with the decision of a majority of
22 the members of that class who have communicated their views
23 to the provider. If the class is evenly divided concerning
24 the health care decision and the supervising health care

1 provider is so informed, that class and all individuals
2 having lower priority are disqualified from making the
3 decision.

4

5 (f) A surrogate shall make a health care decision in
6 accordance with the patient's individual instructions, if
7 any, and other wishes to the extent known to the surrogate.
8 Otherwise, the surrogate shall make the decision in
9 accordance with the surrogate's determination of the
10 patient's best interest. In determining the patient's best
11 interest, the surrogate shall consider the patient's
12 personal, philosophical, religious and ethical values to
13 the extent known to the surrogate and reliable oral or
14 written statements previously made by the patient,
15 including, but not limited to, statements made to family
16 members, friends, health care providers or religious
17 leaders.

18

19 (g) A health care decision made by a surrogate for a
20 patient is effective without judicial approval.

21

22 (h) The patient at any time may disqualify another,
23 including a member of the individual's family, from acting
24 as the individual's surrogate by a signed writing or by

1 personally informing the supervising health care provider
2 of the disqualification.

3

4 (j) Unless related to the patient by blood, marriage
5 or adoption, a surrogate may not be an owner, operator or
6 employee of a residential or community care facility at
7 which the patient is receiving care.

8

9 (k) A supervising health care provider may require an
10 individual claiming the right to act as surrogate for a
11 patient to provide a written declaration under penalty of
12 perjury stating facts and circumstances reasonably
13 sufficient to establish the claimed authority.

14

15 **35-22-407. Decisions by guardian.**

16

17 (a) A guardian shall comply with the ward's
18 individual instructions and may not revoke the ward's
19 advance health care directive unless the appointing court
20 expressly so authorizes.

21

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

1

2 (c) A health care decision of a guardian takes
3 precedence over that of a surrogate.

4

5 (d) A health care decision made by a guardian for the
6 ward is effective without judicial approval.

7

8 **35-22-408. Obligations of health care provider.**

9

10 (a) Before implementing a health care decision made
11 for a patient, a supervising health care provider, if
12 possible, shall promptly communicate to the patient the
13 decision made and the identity of the person making the
14 decision.

15

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

24

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

10

11 (d) Except as provided in subsections (e) and (f) of
12 this section, a health care provider or institution
13 providing care to a patient shall:

14

15 (i) Comply with an individual instruction of the
16 patient and with a reasonable interpretation of that
17 instruction made by a person then authorized to make health
18 care decisions for the patient; and

19

20 (ii) Comply with a health care decision for the
21 patient made by a person then authorized to make health
22 care decisions for the patient to the same extent as if the
23 decision had been made by the patient while having
24 capacity.

1

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

17

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

24

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

4
5 (i) Promptly so inform the patient, if possible,
6 and any person then authorized to make health care
7 decisions for the patient;

8
9 (ii) Provide continuing care, including
10 continuing life sustaining care, to the patient until a
11 transfer can be effected; and

12
13 (iii) Unless the patient or person then
14 authorized to make health care decisions for the patient
15 refuses assistance, immediately make all reasonable efforts
16 to assist in the transfer of the patient to another health
17 care provider or institution that is willing to comply with
18 the instruction or decision.

19
20 (h) A health care provider or institution may not
21 require or prohibit the execution or revocation of an
22 advance health care directive as a condition for providing
23 health care.

24

1 **35-22-409. Health care information.**

2

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

8

9 **35-22-410. Immunities.**

10

11 (a) A health care provider or institution acting in
12 good faith and in accordance with generally accepted health
13 care standards applicable to the health care provider or
14 institution is not subject to civil or criminal liability
15 or to discipline for unprofessional conduct for:

16

17 (i) Complying with a health care decision of a
18 person apparently having authority to make a health care
19 decision for a patient, including a decision to withhold or
20 withdraw health care;

21

22 (ii) Declining to comply with a health care
23 decision of a person based on a belief that the person then
24 lacked authority;

1

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

5

6 (iv) Providing life-sustaining treatment in an
7 emergency situation when the existence of a health care
8 directive is unknown; or

9

10 (v) Declining to comply with a health care
11 decision or advance health care directive because the
12 instruction is contrary to the conscience or good faith
13 medical judgment of the health care provider, or the
14 written policies of the institution.

15

16 (b) An individual acting as agent or surrogate under
17 this act is not subject to civil or criminal liability or
18 to discipline for unprofessional conduct for health care
19 decisions made in good faith.

20

21 **35-22-411. Statutory damages.**

22

23 (a) A health care provider or institution that
24 violates this act willfully or with reckless disregard of

1 the patient's instruction or health care decision is
2 subject to liability to the aggrieved individual for
3 damages of five hundred dollars (\$500.00) or actual damages
4 resulting from the violation, whichever is greater, plus
5 reasonable attorney's fees.

6

7 (b) A person who intentionally falsifies, forges,
8 conceals, defaces or obliterates an individual's advance
9 health care directive or a revocation of an advance health
10 care directive without the individual's consent, or who
11 coerces or fraudulently induces an individual to give,
12 revoke or not to give an advance health care directive, is
13 subject to liability to that individual for damages of two
14 thousand five hundred dollars (\$2,500.00) or actual damages
15 resulting from the action, whichever is greater, plus
16 reasonable attorney's fees.

17

18 **35-22-412. Capacity.**

19

20 (a) This act does not affect the right of an
21 individual to make health care decisions while having
22 capacity to do so.

23

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

5

6 **35-22-413. Effect of copy.**

7

8 A copy of a written advance health care directive,
9 revocation of an advance health care directive, or
10 designation or disqualification of a surrogate has the same
11 effect as the original.

12

13 **35-22-414. Effect of act.**

14

15 (a) This act does not create a presumption concerning
16 the intention of an individual who has not made or who has
17 revoked an advance health care directive.

18

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

1

2 (c) This act does not authorize mercy killing,
3 assisted suicide, euthanasia or the provision, withholding
4 or withdrawal of health care, to the extent prohibited by
5 other statutes of this state.

6

7 (d) This act does not authorize or require a health
8 care provider or institution to provide health care
9 contrary to generally accepted health care standards
10 applicable to the health care provider or institution.

11

12 (e) This act does not affect other statutes of this
13 state governing treatment for mental illness of an
14 individual involuntarily committed to a mental health care
15 institution pursuant to law or a psychiatric advance
16 directive executed in accordance with W.S. 35-22-301
17 through 35-22-308.

18

19 **35-22-415. Judicial relief.**

20

21 On petition of a patient, the patient's agent, guardian or
22 surrogate, a health care provider or institution involved
23 with the patient's care, or an individual described in W.S.
24 35-22-105(b) or (c), the district court may enjoin or

1 direct a health care decision or order other equitable
2 relief. A proceeding under this section is governed by the
3 Wyoming Rules of Civil Procedure.

4

5 **35-22-416. Uniformity of application and**
6 **construction.**

7

8 This act shall be applied and construed to effectuate its
9 general purpose to make uniform the law with respect to the
10 subject matter of this act among states enacting it.

11

12 **35-22-417. Severability.**

13

14 If any provision of this act or its application to any
15 person or circumstance is held invalid, the invalidity does
16 not affect other provisions or applications of this act
17 which can be given effect without the invalid provision or
18 application, and to this end the provisions of this act are
19 severable.

20

21 **Section 2.** W.S. 3-5-201 through 3-5-213 and 35-22-101
22 through 35-22-109 are repealed.

23

1 **Section 3.** This act is effective July 1, 2005.

2

3

(END)