

ENROLLED ACT NO. 28, HOUSE OF REPRESENTATIVES

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING  
2007 GENERAL SESSION

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

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

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

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

(a) As used in this act:

(xiv) "Primary health care provider" means any person licensed under the Wyoming statutes practicing within the scope of that license as a licensed physician, licensed physician's assistant or licensed advanced practice registered nurse and who is designated by an individual or the individual's agent, guardian or surrogate

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to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated provider is not reasonably available, a provider who undertakes the responsibility;

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

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

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

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

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I declare under penalty of perjury under the laws of Wyoming that the person who signed or acknowledged this document is personally known to me to be the principal, ~~that and~~ the principal signed or acknowledged this document in my presence, ~~that the principal appears to be of sound mind and under no duress, fraud or undue influence, that I am not the person appointed as attorney in fact by this document, and that I am not a treating health care provider, an employee of a treating health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility, nor an employee of an operator of a residential care facility.~~

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

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

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

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

(a) If a valid advance health care directive does not exist, a surrogate may make a health care decision for a

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patient who is an adult or emancipated minor if the patient has been determined by the primary physician or the ~~supervising~~-primary health care provider to lack capacity and no agent or guardian has been appointed or the agent or guardian is not reasonably available.

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

(e) If more than one (1) member of a class assumes authority to act as surrogate, and ~~they~~-the other members of the class do not agree on a health care decision and the ~~supervising~~-primary health care provider is so informed, the ~~supervising~~-primary health care provider shall comply with the decision of a majority of the members of that class who have communicated their views to the provider. ~~If the class is evenly divided concerning the health care decision and the supervising health care provider is so informed, that class and all individuals having lower priority are disqualified from making the decision.~~

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

(k) A ~~supervising~~-primary health care provider may require an individual claiming the right to act as surrogate for a patient to provide a written declaration

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under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

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

(e) A guardian's authority to make health care decisions for the ward shall be as provided in W.S. 3-2-201(a)(iii), subject to the restrictions in W.S. 3-2-202 and 35-22-407(b).

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

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

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

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

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(e) A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience. A health care institution may decline to comply with an individual instruction or health care decision if the instruction or decision is contrary to a written policy of the institution which is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient. The ~~provider or~~ institution shall deliver the written policy upon receipt of the patient's advance directive that may conflict with the policy or upon notice from the ~~supervising~~ primary health care provider that the patient's instruction or decision may be in conflict with the health care institution's policy.

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

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

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

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

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

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

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk