

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 103

BY: BROWN

AS INTRODUCED

AN ACT RELATING TO PROBATE PROCEDURE; CREATING DURABLE POWER OF ATTORNEY FOR HEALTH CARE ACT AND PROVIDING SHORT TITLE; STATING PURPOSE; PROVIDING DEFINITIONS; REQUIRING SUBSTANTIAL COMPLIANCE; PROVIDING FOR REQUIREMENTS AND CONTENTS OF CERTAIN DURABLE POWER; PROHIBITING CERTAIN PERSONS FROM ACTING AS ATTORNEY IN FACT; REQUIRING CERTAIN NOTICES; PROVIDING FOR EXERCISE OF POWER UNDER CERTAIN CONDITIONS AND STATING PRIORITY; DECLARING POWERS AND DUTIES; DECLARING EFFECT ON OTHER RIGHTS; PROVIDING FOR EXPIRATION; STATING RIGHTS AND POWERS OF PRINCIPAL; PROVIDING FOR REVOCATION; LIMITING LIABILITY OF HEALTH CARE PROVIDERS UNDER CERTAIN CIRCUMSTANCES; STATING LAW APPLICABLE IN CERTAIN CIRCUMSTANCES; PROHIBITING REQUIREMENT OF DURABLE POWER AS CONDITION; PROVIDING FOR CODIFICATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.1 of Title 58, unless there is created a duplication in numbering, reads as follows:

This act shall be known as the "Durable Power of Attorney for Health Care Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.2 of Title 58, unless there is created a duplication in numbering, reads as follows:

The purpose of this act shall be to establish guidelines for the recognition of a durable power of attorney for health care.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.3 of Title 58, unless there is created a duplication in numbering, reads as follows:

For the purpose of this act:

1. "Durable power of attorney for health care" shall mean a document that authorizes an attorney in fact to make health care decisions for the principal if the principal is unable to give informed consent with respect to a given health care decision;

2. "Attorney in fact" shall mean one who is designated as an agent in a durable power of attorney for health care to make health care decisions on behalf of the principal;

3. "Health care" shall mean any care, treatment, service or procedure to maintain, diagnose or treat an individual's physical or mental condition;

4. "Health care decision" shall mean consent, refusal of consent, or withdrawal of consent to health care;

5. "Health care provider" shall mean a person who is licensed, certified or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or practice of a profession; and

6. "Person" shall include an individual, corporation, partnership, association, the state, a city, county, city and county, or other public entity or governmental subdivision or agency, or any other legal entity.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.4 of Title 58, unless there is created a duplication in numbering, reads as follows:

A durable power of attorney for health care executed after the effective date of this act is effective to authorize the attorney in fact to make health care decisions for the principal only if the power of attorney substantially complies with the provisions stated herein.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.5 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. An attorney in fact shall make health care decisions only if the following requirements are satisfied:

1. The durable power of attorney specifically authorizes the attorney in fact to make health care decisions; and

2. The durable power of attorney contains the date of its execution and is witnessed by one of the following methods:

- a. Be signed by at least two individuals 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: "I declare under penalty of perjury under the laws of this state that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney 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 health care provider, nor an employee of a health care provider or facility." In addition, the declaration of at least one of the witnesses must include the

following: "I am not related to the principal by blood, marriage or adoption, and to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will now existing or by operation of law."

- b. Be acknowledged before a notary public at any place within this state, the notary public certifying to the substance of the following:

State of

County of

On this \_\_\_ day of \_\_\_, in the year \_\_\_, before me,

(Insert name of Notary Public) personally appeared

\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under the penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

Notary Seal

(Signature of Notary Public)

B. None of the following may be used as witness for a durable power of attorney for health care:

1. A health care provider;
2. An employee of a health care provider or facility; and
3. The attorney in fact.

C. At least one of the individuals used as a witness for a durable power of attorney for health care shall be someone who is not one of the following:

1. A relative of the principal by blood, marriage or adoption;

2. An individual who would be entitled to any portion of the estate of the principal upon his or her death under any will or codicil thereto of the principal existing at the time of execution of the durable power of attorney for health care or by operation of law then existing.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.6 of Title 58, unless there is created a duplication in numbering, reads as follows:

Treating health care providers and employees of a treating health care provider shall not be designated as an attorney in fact to make health care decisions under a durable power of attorney for health care.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.7 of Title 58, unless there is created a duplication in numbering, reads as follows:

A printed form of durable power of attorney for health care sold or otherwise distributed in this state for use by an individual who does not have the advice of legal counsel shall provide only for the authority to make health care decisions on behalf of the principal, and shall include the following notice:

NOTICE TO PERSON EXECUTING THIS DOCUMENT

This is an important legal document. Before executing this document, you should know these important facts:

This document gives the person you designate as the attorney in fact (your agent) the power to make health care decisions for you. This power exists only as to those health care decisions to which you are unable to give informed consent. The attorney in fact must act consistently with your desires as stated in this document or otherwise made known.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may not be stopped or withheld if you object at the time.

The document gives your agent authority to consent, to refuse to consent, or to withdraw consent to any care, treatment, service or procedure to maintain, diagnose, or treat a physical or mental condition. This power is subject to any statement of your desires and any limitations that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent (1) authorizes anything that is illegal, (2) acts contrary to your known desires, or (3) where your desires are not known, does anything that is clearly contrary to your best interests.

Unless you specify a shorter period in this document, this power will exist for seven years from the date it is executed and, if you are unable to make health care decisions for yourself at the time when this seven-year period ends, this power will continue to exist until the time you become able to make health care decisions for yourself.

You have the right to revoke the authority of your agent by notifying your agent or your treating doctor, hospital or other health care provider orally or in writing of the revocation. Your agent has the right to examine your medical records and to consent to this disclosure unless you limit this right in this document.

Unless you otherwise specify in this document, this document gives your agent the power after you die to (1) authorize an

autopsy, (2) donate your body or parts thereof for transplant or for educational, therapeutic or scientific purposes, and (3) direct the disposition of your remains.

If there is anything in this document that you do not understand, you should ask your lawyer to explain it to you. This power of attorney will not be valid for making health care decisions unless it is either signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature or acknowledged before a notary public in the state.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.8 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. Unless the durable power of attorney provides otherwise, an attorney in fact who is known to the health care provider to be available and willing to make health care decisions has priority over any other person to act for the principal in all matters of health care decisions. The attorney in fact does not have authority to make a particular health care decision if the principal is able to give informed consent with respect to that decision.

B. Subject to any limitations in the durable power of attorney, the attorney in fact may make health care decisions for the principal, before or after the death of the principal, to the same extent as the principal could make health care decisions for himself or herself if the principal had the capacity to do so, including:

1. making a disposition under the state's anatomical gift act;
2. authorizing an autopsy; and
3. directing the disposition of remains.

C. In exercising the authority under the durable power of attorney for health care, the attorney in fact has a duty to act consistent with the desires of the principal as expressed in the durable power of attorney or otherwise made known to the attorney in

fact at any time or, if the principal's desires are unknown, to act in the best interests of the principal.

D. Nothing in this act affects any right the individual designated as attorney in fact may have, apart from the durable power of attorney for health care, to make or participate in the making of health care decisions on behalf of the principal.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.9 of Title 58, unless there is created a duplication in numbering, reads as follows:

Except to the extent the right is limited by the durable power of attorney, an attorney in fact has the same right as the principal to receive and review medical records, and to consent to the disclosure of medical records when acting pursuant to the durable power of attorney for health care.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.10 of Title 58, unless there is created a duplication in numbering, reads as follows:

Unless a shorter period is provided in the durable power of attorney for health care, the document shall expire seven years after the date of its execution, unless at the end of the seven-year period, the principal lacks the capacity to make health care decisions for himself, in which case the durable power of attorney for health care continues in effect until the time when the principal regains capacity to make health care decisions for himself.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.11 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. At any time while the principal has the capacity to give a durable power of attorney for health care, the principal may do any of the following:

1. Revoke the appointment of the attorney in fact under the durable power of attorney for health care by notifying the attorney in fact orally or in writing; and

2. Revoke the authority granted to the attorney in fact to make health care decisions by notifying the health care provider.

B. If the principal notifies the health care provider orally or in writing that the authority granted to the attorney in fact to make health care decisions is revoked, the health care provider shall make the notification a part of the principal's medical records.

C. It is presumed that the principal has the capacity to revoke a durable power of attorney for health care.

D. Unless it provides otherwise, a valid durable power of attorney for health care revokes any prior durable power of attorney for health care.

E. If authority granted by a durable power of attorney for health care is revoked under this section, a person is not subject to criminal prosecution or civil liability for acting in good faith reliance upon the durable power of attorney unless the person has actual knowledge of the revocation.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.12 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. A health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action if the health care provider relies on a health care decision and both of the following requirements are satisfied:

1. The decision is made by an attorney in fact who the health care provider believes in good faith is authorized under this act to make the decision; and

2. The health care provider believes in good faith that the decision is not consistent with the desires of the principal as

expressed in the durable power of attorney or otherwise made known to the health care provider, and, if the decision is to withhold or withdraw health care necessary to keep the principal alive, the health care provider has made a good faith effort to determine the desires of the principal to the extent that the principal is able to convey these desires to the health care provider, and the results of the effort are made a part of the principal's medical records.

B. Notwithstanding the health care decision of the attorney in fact, the health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action for failing to withdraw health care necessary to keep the principal alive.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.13 of Title 58, unless there is created a duplication in numbering, reads as follows:

This act does not affect the law governing health care treatment in an emergency.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.14 of Title 58, unless there is created a duplication in numbering, reads as follows:

Nothing in this act authorizes an attorney in fact to consent to health care, or to consent to the withholding or withdrawal of health care necessary to keep the principal alive, if the principal objects to the health care or to the withholding or withdrawal of the health care. In such a case, the case is governed by the law that would apply if there were no durable power of attorney for health care.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1064.15 of Title 58, unless there is created a duplication in numbering, reads as follows:

A health care provider, health care service plan, insurer, self-insured employee, welfare benefit plan, or nonprofit hospital plan

may not condition admission to a facility, or the providing of treatment, or insurance, on the requirement that a patient execute a durable power of attorney for health care.

SECTION 16. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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