

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1410

By: Hastings

AS INTRODUCED

An Act relating to public health and safety; creating the Oklahoma Health Care Decisions Act; defining terms; authorizing written health care directives; providing for contents; providing for revocations; releasing certain persons from certain responsibilities; restricting certain actions; requiring how a surrogate is to make health care decisions; releasing surrogate from certain liability; providing for determinations of good faith; requiring compliance within certain decisions; requiring certain duties; releasing certain liability to health care providers; providing for determinations of good faith; providing exceptions; providing for certain petitions; specifying contents; providing procedures; providing for authority of the court; prohibiting certain actions; providing for construction of section and execution of health care directives; providing for validity of prior directives and those from other states; providing for conflicts; providing for written health care power of attorneys; providing for contents; providing for amendments thereto; specifying powers and duties; setting out form; requiring compliance with patient's wishes; requiring consultation; specifying list of individuals who may know patient's wishes; providing for a living will; providing procedures; specifying requirements; setting out form; amending 30 O.S. 1991, Section 3-119, as last amended by Section 15, Chapter 327, O.S.L. 1997 (30 O.S. Supp. 2000, Section 3-119), which relates to the Oklahoma Guardianship and Conservatorship Act; amending Section 1, Chapter 416, O.S.L. 1999 (56 O.S. Supp. 2000, Section 1010.13), which relates to Medicaid beneficiaries; amending Section 5, Chapter 274, O.S.L. 1992, as last amended by Section 16, Chapter 327, O.S.L. 1997 (58 O.S. Supp. 2000, Section 1072.1), which relates to durable power of attorney; amending 63 O.S. 1991, Section 3080.4, as amended by Section 17, Chapter 114, O.S.L. 1992 (63 O.S. Supp. 2000, Section 3080.4), which relates to the Hydration and Nutrition for Incompetent Patients Act; amending Section 3, Chapter 327, O.S.L. 1997, Section 4, Chapter 327, O.S.L. 1997, as last amended by Section 1, Chapter 335, O.S.L. 1999 and Section 5, Chapter 327, O.S.L. 1997 (63 O.S. Supp. 2000, Sections 3131.3, 3131.4 and 3131.5), which relate to the Oklahoma Do-Not-Resuscitate Act; adding to listing of named acts; providing for codification; and providing an effective date.

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 3115.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 18 of this act shall be known and may be cited as the "Oklahoma Health Care Decisions Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Health Care Decisions Act:

1. "Agent" means an adult who has the authority to make health care treatment decisions for another person, referred to as the principal, pursuant to a health care power of attorney;

2. "Artificially administered" means providing food or fluid through a medically invasive procedure;

3. "Attending physician" means a physician who has the primary responsibility for a principal's health care;

4. "Comfort care" means treatment given in an attempt to protect and enhance the quality of life without artificially prolonging that life;

5. "Health care directive" means a document drafted in substantial compliance with the Oklahoma Health Care Decisions Act, to deal with a person's future health care decisions;

6. "Health care power of attorney" means a written designation of an agent to make health care decisions that meets the requirements of Section 12 of this act and that comes into effect and is durable as provided in Section 14 of this act;

7. "Health care provider" means a physician, pursuant to Chapter 11 or 14 of Title 59 of the Oklahoma Statutes, a hospice licensed under the Hospice Licensing Act, or a person who is licensed, certified, or otherwise authorized by the law of this

state to administer health care in the ordinary course of business or practice of a profession;

8. "Interested person" means the patient, a person listed under Section 15 of this act, a health care provider directly involved in the patient's medical care, or an employee of a health care provider;

9. "Living will" means a statement written either by a person who has not written a health care power of attorney or by the principal as an attachment to a health care power of attorney and intended to guide or control the health care treatment decisions that can be made on that person's behalf;

10. "Physician" means a doctor of medicine licensed pursuant to Section 11 of Title 59 of the Oklahoma Statutes or Doctor of Osteopathy licensed pursuant to Chapter 14 of Title 59 of the Oklahoma Statutes;

11. "Principal" means a person who is the subject of a health care power of attorney; and

12. "Surrogate" means a person authorized to make health care decisions for a patient by a power of attorney, a court order, or the provisions of Section 15 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A person who is an adult may designate another adult individual or other adult individuals to make health care decisions on that person's behalf by executing a written health care directive that meets the requirements of the Oklahoma Health Care Decisions Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A person may revoke his or her own health care directive or disqualify a surrogate by doing any of the following:

1. Making a written revocation of a health care directive or a written statement to disqualify a surrogate;
2. Orally notifying the surrogate or a health care provider;
3. Making a new health care directive; or
4. Any other act that demonstrates a specific intent to revoke or to disqualify a surrogate.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A person authorized as a surrogate to make health care decisions pursuant to the Oklahoma Health Care Decisions Act is not responsible for paying the patient's health care costs unless the person is otherwise required to do so.

B. The Oklahoma Health Care Decisions Act does not authorize a surrogate to consent to any act or omission to which the patient could not lawfully consent.

C. 1. The surrogate shall make health care decisions for the patient in accordance with the patient's wishes as expressed in the health care directive. If the health care directive does not provide sufficient information to know what the patient would want in a particular circumstance, the surrogate shall base these decisions on the surrogate's knowledge of the patient's values if those are known or can be determined to the surrogate's satisfaction.

2. If neither the health care directive nor the surrogate's knowledge of the patient's values provides a sufficient basis for making a health care decision, the surrogate shall decide based on the surrogate's good faith belief as to what is in the patient's best interest.

D. 1. A surrogate who makes good faith health care decisions for a patient is not subject to civil or criminal liability for those decisions. Acts and refusals to act made in reliance on the

provisions of a health care directive are presumed to be made in good faith.

2. a. A court shall base a finding of an absence of good faith on information known to the surrogate and shall enter its finding only after it has made a determination of bad faith in written findings of fact based on clear and convincing evidence of improper motive.
- b. For the purposes of this subsection, "good faith" includes all health care decisions, acts, and refusals to act based on a surrogate's reasonable belief of a patient's desires or a patient's best interest if these decisions, acts, or refusals to act are not contrary to the patient's express written directions in a valid health care directive.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A health care provider shall comply with health care decisions made by the patient's surrogate unless those decisions are inconsistent with the patient's health care directive as known to the provider or the provider has transferred responsibility to another provider pursuant to Section 7 of this act. If the directive requires provision of treatment, food or fluids that would have a significant possibility of sustaining the patient's life, the provider shall ensure the provision until the transfer is completed.

B. A health care provider has a duty to volunteer and otherwise disclose information about the patient's health status and care to the patient's surrogate to the same degree that the provider owes this duty to the patient.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A health care provider who makes good faith health care decisions in reliance on the provisions of an apparently genuine health care directive or the direction of a surrogate is immune from criminal and civil liability and is not subject to professional discipline for that reliance.

B. 1. Health care provider acts and refusals to act made in reliance on the provisions of a health care directive or directions of a surrogate are presumed to be made in good faith. A court shall base a finding of an absence of good faith on information known to the provider and shall enter its finding only after it has made a determination of bad faith in written findings of fact based on clear and convincing evidence of improper motive.

2. For the purposes of this subsection, "good faith" includes all health care decisions, acts, and refusals to act based on a health care provider's reasonable belief of a patient's desires, a patient's best interest, or the directives of a patient's surrogate if these decisions, acts, or refusals to act are not contrary to the patient's express written directions in a valid health care directive.

C. A health care provider is not subject to criminal or civil liability or professional discipline for any of the following:

1. Failing to comply with a decision or a direction that violates the provider's conscience if the provider promptly makes known the provider's unwillingness and promptly transfers the responsibility for the patient's care to another provider who is willing to act in accordance with the agent's direction;

2. Failing to consult a disabled or incapacitated patient's surrogate if the surrogate cannot be contacted after the health care provider has made a reasonable effort to do so or if an emergency

situation does not provide the health care provider with sufficient time to locate and consult with the surrogate; and

3. Relying on a court order concerning a patient.

D. This section does not relieve a health care provider from civil or criminal liability or prevent a provider from being subjected to professional disciplinary action for the provider's negligent treatment of a patient if the negligence is unrelated to the provider's reliance on a health care directive, directions from a surrogate, or the recommendations of an institutional ethics committee pursuant to Section 16 of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. An interested person may file a verified petition with the district court to determine the validity or effect of a health care directive or the decision of a surrogate.

B. The petition shall include the following information:

1. The name and current location of the patient and any surrogate authorized to make decisions for the patient;

2. The name and address of any health care provider known by the petitioner to be providing health care to the principal;

3. A description or a copy of the health care directive; and

4. the judicial relief sought by the petitioner.

C. The court shall review the petition, any other pleadings on file, and any evidence offered by the petitioner to determine if it should order temporary orders without a further hearing. The court may enter a temporary order directing the provision or the withholding of specific medical treatment pending a further hearing if the court determines that there is reasonable cause to believe that health care decisions are being made by a surrogate or a health care provider that derogate the patient's wishes or, if the patient's wishes are not known, the patient's best interests.

D. The court shall schedule and conduct a hearing within five (5) working days of the filing of a petition. Notice shall be provided by personal service on the surrogate, the patient, the health care providers immediately responsible for the patient's care, and other persons the court requires to be notified.

E. On the filing of the petition the court may:

1. Appoint an attorney for the patient if it appears that this is in the patient's best interests;

2. Appoint a guardian ad litem as provided in the Oklahoma Guardianship and Conservatorship Act, a physician, or both, to evaluate the patient and submit a written report to the court before the hearing; or

3. Enter other temporary orders that the court determines are necessary and appropriate to protect the wishes or the best interests of the patient, including an order exercising the power of a guardian or appointing a temporary guardian as provided by the Oklahoma Guardianship and Conservatorship Act.

F. A person filing a petition under this section is not required to post a bond unless the court determines that a bond is necessary to protect the interests of any party.

G. On notice and a hearing, the court may enter appropriate orders to safeguard the wishes of the patient. If the court is unable to determine those wishes, the court may enter appropriate orders to safeguard the patient's best interest. These orders may include:

1. Appointing a surrogate if the procedural requirements of Section 15 of this act have been met;

2. Removing an agent or any other surrogate and appointing a successor;

3. Directing compliance with the terms of the patient's health care directive including the provisional removal or withholding of treatment if the court finds that this conforms with the patient's

wishes or, if the patient's wishes are not known, is in the patient's best interest;

4. Directing the transfer of the patient to a suitable facility or to the care of a health care provider who is willing to comply with the patient's wishes; and

5. Assessing court costs and attorney fees against a party found to have proceeded in bad faith.

H. Notwithstanding a person's incapacity, the court may deny a petition to appoint a guardian for that person based on the existence of a valid and unrevoked health care directive.

I. A guardian appointed pursuant to this section is immune from civil and criminal liability to the same extent as any other surrogate pursuant to Section 5 of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A person shall not require a person to execute or prohibit a person from executing a health care directive as a condition for providing health care services or insurance.

B. An insurer shall not refuse to pay for goods or services under a patient's insurance policy because the decision to use the goods or services was made by the patient's surrogate.

C. If a patient's death follows the withholding or withdrawing of any medical care pursuant to a surrogate's decision not expressly precluded by the patient's healthcare directive, that does not constitute a homicide or a suicide and does not impair or invalidate an insurance policy, an annuity, or any other contract that is conditioned on the life or death of the patient regardless of any terms of that contract.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A health care directive prepared before the effective date of this act or prepared in another state, district, or territory of the United States is valid in this state if it was valid in the place where and at the time when it was adopted and only to the extent that it does not conflict with the criminal laws of this state.

B. If there are conflicts among the provisions of valid health care directives, the most recent directive is deemed to represent the wishes of the patient.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Health Care Decisions Act does not approve or authorize suicide, assisted suicide, or mercy killing.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A person who is an adult may designate another adult individual or other adult individuals to make health care decisions on that person's behalf by executing a written health care power of attorney that meets all of the following requirements:

1. Contains language that clearly indicates that the person intends to create a health care power of attorney;

2. Except as provided under subsection B of this section, is dated and signed or marked by the person who is the subject of the health care power of attorney; and

3. Is notarized or is witnessed in writing by at least one adult who affirms that the notary or witness was present when the person dated and signed or marked the health care power of attorney, except as provided under subsection B of this section, and that the person appeared to be of sound mind and free from duress at the time of execution of the health care power of attorney.

B. If a person is physically unable to sign or mark a health care power of attorney, the notary or each witness shall verify on the document that the person directly indicated to the notary or witness that the power of attorney expressed the person's wishes and that the person intended to adopt the power of attorney at that time.

C. A notary or witness shall not be any of the following:

1. A person designated to make medical decisions on the principal's behalf; or
2. A person directly involved with the provision of health care to the principal at the time the health care power of attorney is executed.

D. If a health care power of attorney is witnessed by only one person, that person may not be related to the principal by blood, marriage or adoption and may not be entitled to any part of the principal's estate by will or by operation of law at the time that the power of attorney is executed.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

An amendment to a health care power of attorney shall meet the requirements of Section 12 of this act unless the amendment is only made to indicate an agent's change of address or telephone number.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.14 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The individual designated in a health care power of attorney to make health care decisions is an agent entitled to make and communicate these decisions while the principal is unable to do so.

B. An agent's authority to make health care decisions on behalf of the principal is limited only by the express language of the

health care power of attorney or by court order as prescribed under Section 8 of this act.

C. The appointment of a person to act as an agent is effective until that authority is revoked by the principal or by court order.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.15 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any writing that meets the requirements of Section 12 of this act may be used to create a health care power of attorney. The following form is offered as a sample only and does not prevent a person from using other language or another form:

1. Health Care Power of Attorney

I, _____, as principal, designate _____ as my agent for all matters relating to my health care, including, without limitation, full power to give or refuse consent to all medical, surgical, hospital and related health care. This power of attorney is effective on my inability to make or communicate health care decisions. All of my agent's actions under this power during any period when I am unable to make or communicate health care decisions or when there is uncertainty whether I am dead or alive have the same effect on my heirs, devisees, and personal representatives as if I were alive, competent, and acting for myself.

If my agent is unwilling or unable to serve or continue to serve, I hereby appoint _____ as my agent.

I have ___ I have not ___ completed and attached a living will for purposes of providing specific direction to my agent in situations that may occur during any period when I am unable to make or communicate health care decisions or after my death. My agent is directed to implement those choices I have initialed in the living will.

Do-Not-Resuscitate Consent Form

This health care directive is made pursuant to Section 3115.12 of Title 63 of the Oklahoma Statutes, and continues in effect for all who may rely on it except those to whom I have given notice of its revocation.

Signature of Principal

Witness: _____

Date: _____

Time: _____

Address: _____

Address of Agent

Witness _____

Address: _____

(Note: This document may be notarized instead of being witnessed.)

2. Autopsy (under Oklahoma law an autopsy may be required)

If you wish to do so, reflect your desires below:

_____ a. I do not consent to an autopsy.

_____ b. I consent to an autopsy.

_____ c. My agent may give consent to or refuse an autopsy.

3. Organ Donation

If any of the statements below reflects your desire, initial on the line next to that statement. You do not have to initial any of the statements.

If you do not check any of the statements, your agent and your family will have the authority to make a gift of all or part of your body pursuant to Oklahoma law.

_____ I do not want to make an organ or tissue donation and I do not want my agent or family to do so.

_____ I have already signed a written agreement or donor card regarding organ and tissue donation with the following individual or institution:

_____ Pursuant to Oklahoma law, I hereby give, effective on my death:

Any needed organ or parts.

The following part or organs listed:

for (check one):

Any legally authorized purpose.

Transplant or therapeutic purposes only.

4. Physician Affidavit (optional)

(Before initialing any choices above you may wish to ask questions of your physician regarding a particular treatment alternative. If you do speak with your physician it is a good idea to ask your physician to complete this affidavit and keep a copy for his or her file.)

I, Dr. _____ have reviewed this guidance document and have discussed with _____ any questions regarding the probable medical consequences of the treatment choices provided above. This discussion with the principal occurred on _____.

(date)

I have agreed to comply with the provisions of this directive.

Signature of Physician

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.16 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. If an adult patient is unable to make or communicate health care treatment decisions, a health care provider shall make a reasonable effort to locate and shall follow a health care directive. A health care provider shall also make a reasonable effort to consult with a surrogate.

2. If the patient has a health care power of attorney that meets the requirements of Section 12 of this act, the patient's designated agent shall act as the patient's surrogate. However, if the court appoints a guardian for the express purpose of making health care treatment decisions, that guardian shall act as the patient's surrogate.

3. If neither of these situations applies, the health care provider shall make reasonable efforts to contact the following individual or individuals in the indicated order of priority, who are available and willing to serve as the surrogate, who then have the authority to make health care decisions for the patient and who shall follow the patient's wishes if they are known:

- a. The patient's spouse, unless the patient and spouse are legally separated,
- b. An adult child of the patient. If the patient has more than one adult child, the health care provider shall seek the consent of a majority of the adult children who are reasonably available for consultation,
- c. A parent of the patient,
- d. If the patient is unmarried, the patient's domestic partner if no other person has assumed any financial responsibility for the patient,
- e. A brother or sister of the patient, or
- f. A close friend of the patient. For the purposes of this paragraph, "close friend" means an adult who has exhibited special care and concern for the patient,

who is familiar with the patient's health care views and desires, and who is willing and able to become involved in the patient's health care and to act in the patient's best interest.

B. 1. If the health care provider cannot locate any of the people listed in subsection A of this section, the patient's attending physician may make health care treatment decisions for the patient after the physician consults with and obtains the recommendations of an institutional ethics committee. If this is not possible, the physician may make these decisions after consulting with a second physician who concurs with the physician's decision.

2. For the purposes of this subsection, "institutional ethics committee" means a standing committee of a licensed health care institution appointed or elected to render advice concerning ethical issues involving medical treatment.

C. A person who makes a good faith medical decision pursuant to this section is immune from liability to the same extent and under the same conditions as prescribed in Section 7 of this act.

D. A surrogate who is not the patient's agent or guardian shall not make decisions to withdraw the artificial administration of food or fluid.

E. Except as provided in the Oklahoma Guardianship and Conservatorship Act, a surrogate who is not the patient's agent or guardian shall not make decisions to admit the patient to a level one behavioral health facility licensed by the State Department of Health.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.17 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. An adult may prepare a written statement known as a living will to control the health care treatment decisions that can be made

on that person's behalf. The person may use the living will as part of or instead of a health care power of attorney or to disqualify a surrogate.

B. If the living will is not part of a health care power of attorney, the person shall verify his or her living will in the same manner as prescribed by Section 12 of this act.

C. A health care provider who makes good faith health care decisions based on the provisions of an apparently genuine living will is immune from criminal and civil liability for those decisions to the same extent and under the same conditions as prescribed in Section 7 of this act.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3115.18 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any writing that meets the requirements of this section may be used to create a living will. A person may write and use a living will without writing a health care power of attorney or may attach a living will to the person's health care power of attorney. If a person has a health care power of attorney, the agent must make health care decisions that are consistent with the person's known desires and that are medically reasonable and appropriate. A person can, but is not required to, state the person's desires in a living will.

B. The following form is offered as a sample only and does not prevent a person from using other language or another form:

Living Will

(Some general statements concerning your health care options are outlined below. If you agree with one of the statements, you should initial that statement. Read all of these statements carefully before you initial your selection. You can also write your own statement concerning life-sustaining treatment and other matters relating to your health care. You may initial any combination of

paragraphs 1, 2, 3, and 4, but if you initial paragraph 5 the other should not be initialed.)

_____ 1. If I have a terminal condition I do not want my life to be prolonged and I do not want life-sustaining treatment, beyond comfort care, that would serve only to artificially delay the moment of my death.

_____ 2. If I am in a terminal condition or an irreversible coma or a persistent vegetative state that my doctors reasonably feel to be irreversible or incurable, I do want the medical treatment necessary to provide care that would keep me comfortable, but I do not want the following:

_____ a. Cardiopulmonary resuscitation, for example, the use of drugs, electric shock and artificial breathing.

_____ b. Artificially administered food and fluids.

_____ c. To be taken to a hospital if at all avoidable.

_____ 3. Notwithstanding my other directions, if I am known to be pregnant, I do not want life-sustaining treatment withheld or withdrawn if it is possible that the embryo/fetus will develop to the point of live birth with the continued application of life-sustaining treatment.

_____ 4. Notwithstanding my other directions I do want the use of all medical care necessary to treat my condition until my doctors reasonably conclude that my condition is terminal or is irreversible and incurable or I am in a persistent vegetative state.

_____ 5. I want my life to be prolonged to the greatest extent possible.

Other or Additional Statements of Desires

I have _____ I have not _____ attached additional special provisions or limitations to this document to be honored in the absence of my being able to give health care directions.

SECTION 19. AMENDATORY 30 O.S. 1991, Section 3-119, as last amended by Section 15, Chapter 327, O.S.L. 1997 (30 O.S. Supp. 2000, Section 3-119), is amended to read as follows:

Section 3-119. A guardian shall have no powers except as provided by the Oklahoma Statutes or given to such guardian in the orders in the guardianship proceeding. This limitation of powers includes but is not limited to the following:

1. No guardian shall have the power to consent on behalf of the ward to the withholding or withdrawal of life-sustaining procedures as defined by the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act from the ward, except:

- a. with specific authorization of the court having jurisdiction over the guardianship proceedings. Such authorization must be granted in a separate order and only at such time when the ward is in need of life-sustaining treatment,
- b. as authorized by an advance directive executed pursuant to the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, ~~or~~
- c. as authorized by a health care directive executed pursuant to the Oklahoma Health Care Decisions Act, or
- d. as authorized by a consent not to resuscitate made pursuant to the Oklahoma Do-Not-Resuscitate Act;

2. No guardian or court having jurisdiction of the guardianship proceeding shall have the power to consent on behalf of the ward or order the consent on behalf of the ward to the termination or relinquishment of parental rights of the ward;

3. Except in an emergency and only as necessary to preserve the life of the ward, no guardian shall have the power to consent on behalf of the ward to an abortion, psychosurgery, removal of a bodily organ, performance of any experimental biomedical or behavioral procedure, or participation in any biomedical or

behavioral experiment, except with specific authorization of the court having jurisdiction of the guardianship proceeding;

4. No guardian shall have the power to prohibit the marriage or divorce of a ward except with specific authorization of the court having jurisdiction of the guardianship proceeding; and

5. No guardian shall have the power to consent on behalf of the ward to placement of the ward in a facility or institution to which a person without a guardian would have to be committed pursuant to the laws of this state absent formal commitment proceedings in which the ward has independent counsel.

SECTION 20. AMENDATORY Section 1, Chapter 416, O.S.L. 1999 (56 O.S. Supp. 2000, Section 1010.13), is amended to read as follows:

Section 1010.13 A Medicaid beneficiary, including, but not limited to, a beneficiary currently enrolled in a fully or partially capitated managed care delivery model pursuant to the provisions of the Oklahoma Medicaid Healthcare Options System, who is not medically or legally competent may have another person act on the beneficiary's behalf for purposes of enrollment or reenrollment into any of the managed care delivery models. A person so authorized shall be a member of one of the following classes of persons:

1. An authorized representative pursuant to the provisions of 20 U. S. Code of Federal Regulations, Sections 404.1075 through 404.1707;

2. The beneficiary's spouse;

3. The guardian of the person appointed pursuant to the Oklahoma Guardianship and Conservatorship Act;

4. The attorney-in-fact for health care decisions acting pursuant to the provisions of the Uniform Durable Power of Attorney Act ~~or~~, the health care proxy acting pursuant to the provisions of the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, or an agent who has authority to make health care

treatment decisions for another person pursuant to the Oklahoma Health Care Decisions Act;

5. A child of the beneficiary who is at least eighteen (18) years of age;

6. A parent of the beneficiary; or

7. A brother or sister of the beneficiary who is at least eighteen (18) years of age.

SECTION 21. AMENDATORY Section 5, Chapter 274, O.S.L. 1992, as last amended by Section 16, Chapter 327, O.S.L. 1997 (58 O.S. Supp. 2000, Section 1072.1), is amended to read as follows:

Section 1072.1 A. The durable power of attorney may show or state:

1. The fact of execution under the provisions of the Uniform Durable Power of Attorney Act;

2. The time and conditions under which the power is to become effective;

3. The extent and scope of the powers conferred; and

4. Who is to exercise the power, including any successor attorney-in-fact if a prior appointed attorney-in-fact dies, ceases to act, refuses or is unable to serve, or resigns.

B. The power may grant complete or limited authority with respect to the principal's:

1. Person, including, but not limited to, health and medical care decisions and a do-not-resuscitate consent on the principal's behalf, but excluding:

a. the execution, on behalf of the principal, of a Directive to Physicians, an Advance Directive for Health Care, Living Will, a health care directive, or other document purporting to authorize life-sustaining treatment decisions, and

b. the making of life-sustaining treatment decisions unless the power complies with the requirements for a

health care proxy under the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, the Oklahoma Health Care Decisions Act, or the Oklahoma Do-Not-Resuscitate Act; and

2. Property, including homestead property, whether real, personal, intangible or mixed.

SECTION 22. AMENDATORY 63 O.S. 1991, Section 3080.4, as amended by Section 17, Chapter 114, O.S.L. 1992 (63 O.S. Supp. 2000, Section 3080.4), is amended to read as follows:

Section 3080.4 A. The presumption pursuant to Section 3080.3 of this title shall not apply if:

1. The attending physician of the incompetent patient knows, or a court finds, by clear and convincing evidence that the patient, when competent decided on the basis of information sufficient to constitute informed consent that artificially administered hydration or artificially administered nutrition should be withheld or withdrawn from him. A directive executed pursuant to the Oklahoma Natural Death Act specifically authorizing the withholding or withdrawal of nutrition and/or hydration shall be deemed to satisfy the provisions of this paragraph. An advance directive for health care executed pursuant to the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act specifically authorizing the withholding or withdrawal of nutrition and/or hydration shall be deemed to satisfy the provisions of this paragraph. A health care directive executed pursuant to the Oklahoma Health Care Decisions Act authorizing the withholding of artificially administered food or fluid shall be deemed to satisfy the provisions of this paragraph;
or

2. In the reasonable medical judgment of the incompetent patient's attending physician and a second consulting physician, artificially administered hydration or artificially administered nutrition will itself cause severe, intractable, and long-lasting

pain to the incompetent patient or such nutrition or hydration is not medically possible; or

3. In the reasonable medical judgment of the incompetent patient's attending physician and a second consulting physician:

- a. the incompetent patient is chronically and irreversibly incompetent,
- b. the incompetent patient is in the final stage of a terminal illness or injury, and
- c. the death of the incompetent patient is imminent.

B. Hydration or nutrition may not be withheld or withdrawn pursuant to paragraph 3 of subsection A of this section if this would result in death from dehydration or starvation rather than from the underlying terminal illness or injury.

SECTION 23. AMENDATORY Section 3, Chapter 327, O.S.L. 1997 (63 O.S. Supp. 2000, Section 3131.3), is amended to read as follows:

Section 3131.3 As used in the Oklahoma Do-Not-Resuscitate Act:

1. "Attending physician" means a licensed physician who has primary responsibility for treatment or care of the person. If more than one physician shares that responsibility, any of those physicians may act as the attending physician under the provisions of the Oklahoma Do-Not-Resuscitate Act;

2. "Cardiopulmonary resuscitation" means those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory arrest;

3. "Do-not-resuscitate identification" means a standardized identification necklace, bracelet, or card as set forth in the Oklahoma Do-Not-Resuscitate Act that signifies that a do-not-resuscitate consent or order has been executed for the possessor;

4. "Do-not-resuscitate order" means an order issued by a licensed physician that cardiopulmonary resuscitation should not be administered to a particular person;

5. "Emergency medical services personnel" means firefighters, law enforcement officers, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities, acting within the usual course of their professions;

6. "Health care decision" means a decision to give, withhold, or withdraw informed consent to any type of health care including, but not limited to, medical and surgical treatments including life-prolonging interventions, nursing care, hospitalization, treatment in a nursing home or other extended care facility, home health care, and the gift or donation of a body organ or tissue;

7. "Health care agency" means an agency established to administer or provide health care services and which is commonly known by a wide variety of titles including, but not limited to, hospitals, medical centers, ambulatory health care facilities, physicians' offices and clinics, extended care facilities operated in connection with hospitals, nursing homes, extended care facilities operated in connection with rehabilitation centers, home care agencies and hospices;

8. "Health care provider" means any physician, dentist, nurse, paramedic, psychologist, or other person providing medical, dental, nursing, psychological, hospice, or other health care services of any kind;

9. "Incapacity" means the inability, because of physical or mental impairment, to appreciate the nature and implications of a health care decision, to make an informed choice regarding the alternatives presented, and to communicate that choice in an unambiguous manner; and

10. "Representative" means an attorney-in-fact for health care decisions acting pursuant to the Uniform Durable Power of Attorney Act, a health care proxy acting pursuant to the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, an agent acting pursuant to the Oklahoma Health Care Decisions Act, or a guardian of

the person appointed under the Oklahoma Guardianship and Conservatorship Act.

SECTION 24. AMENDATORY Section 4, Chapter 327, O.S.L. 1997, as last amended by Section 1, Chapter 335, O.S.L. 1999 (63 O.S. Supp. 2000, Section 3131.4), is amended to read as follows:

Section 3131.4 A. Every person shall be presumed to consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest, unless one or more of the following conditions, of which the health care provider has actual knowledge, apply:

1. The person has notified such person's attending physician that the person does not consent to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest and that notification has been entered in the patient's medical records;

2. The parent or guardian of a minor child, after consultation with the minor child's attending physician, has notified the minor child's attending physician that the parent or guardian does not consent to the administration of cardiopulmonary resuscitation in the event of the minor child's cardiac or respiratory arrest, and that the minor child, if capable of doing so and possessing sufficient understanding and appreciation of the nature and consequences of the treatment decision despite the minor child's chronological age, has not objected to this decision of the parent or guardian, and such notification has been entered in the minor child's medical records; provided, medically indicated treatment may not be withheld from a disabled infant with life-threatening conditions to the extent that such medically indicated treatment is required by federal law or regulations as a condition for the receipt of federally funded grants to this state for child abuse and neglect prevention and treatment programs;

3. An incapacitated person's representative has notified the incapacitated person's attending physician that the representative, based on the known wishes of the incapacitated person, does not consent to the administration of cardiopulmonary resuscitation in the event of the incapacitated person's cardiac or respiratory arrest and that notification has been entered in the patient's medical records;

4. An attending physician of an incapacitated person without a representative knows by clear and convincing evidence that the incapacitated person, when competent, decided on the basis of information sufficient to constitute informed consent that the person would not have consented to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest. Clear and convincing evidence for this purpose shall include oral, written, or other acts of communication between the patient, when competent, and family members, health care providers, or others close to the patient with knowledge of the patient's personal desires;

5. A do-not-resuscitate consent form in accordance with the provisions of the Oklahoma Do-Not-Resuscitate Act has been executed for that person; or

6. An executed advance directive for health care, or other document recognized by the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, or an executed health care directive issued pursuant to the Oklahoma Health Care Decisions Act directing that life-sustaining treatment not be performed in the event of cardiac or respiratory arrest, is in effect for that person, pursuant to the provisions of paragraph 1 of Section 3101.3 or Section 3101.14 of this title.

B. Health care agencies shall maintain written policies and procedures with respect to do-not-resuscitate orders, do-not-resuscitate consent forms, and certifications of physician. Such

written policies and procedures shall ensure the following rights to all persons under the care of health care agencies:

1. All decisions with respect to the administration of cardiopulmonary resuscitation shall be made by the patient unless it is appropriate under this section for the patient's representative, as defined by Section 3131.3 of this title, to do so. The reason the representative, rather than the patient, has made a decision shall be documented in the patient's medical record.

2. a. No decision by the patient's representative shall be made until the representative has been instructed in writing by the patient's attending physician that such representative is deciding what the incapacitated person would have wanted if the incapacitated person could speak for himself or herself. In addition, the attending physician shall encourage consultation among all reasonably available representatives, family members, and persons close to the incapacitated person to the extent feasible in the circumstances of the case.

b. Whenever possible, the attending physician shall explain to the representative and family members the nature and consequences of the decision to be made. Evidence that this explanation was provided shall be documented in the medical records of the incapacitated person.

3. Health care agencies shall provide ongoing education to patients, health care providers, and the community on issues concerning use of the do-not-resuscitate consent form.

C. Nothing in the Oklahoma Do-Not-Resuscitate Act shall require:

1. A health care agency to institute or maintain the ability to provide cardiopulmonary resuscitation or to expand its existing

equipment, facilities, or personnel to provide cardiopulmonary resuscitation; provided, if such health care agency does not provide cardiopulmonary resuscitation, this policy shall be communicated in writing to the person or representative prior to the person coming under the care of the health care agency; and

2. A physician, health care provider, or health care agency to begin or continue the administration of cardiopulmonary resuscitation when, in reasonable medical judgment, it would not prevent the imminent death of the patient.

SECTION 25. AMENDATORY Section 5, Chapter 327, O.S.L. 1997 (63 O.S. Supp. 2000, Section 3131.5), is amended to read as follows:

Section 3131.5 A. For persons under the care of a health care agency, a do-not-resuscitate order shall, if issued, be in accordance with the policies and procedures of the health care agency as long as not in conflict with the provisions of the Oklahoma Do-Not-Resuscitate Act.

B. The do-not-resuscitate consent form shall be in substantially the following form:

FRONT PAGE

OKLAHOMA DO-NOT-RESUSCITATE (DNR) CONSENT FORM

I, _____, request limited health care as described in this document. If my heart stops beating or if I stop breathing, no medical procedure to restore breathing or heart function will be instituted by any health care provider including, but not limited to, emergency medical services (EMS) personnel.

I understand that this decision will not prevent me from receiving other health care such as the Heimlich maneuver or oxygen and other comfort care measures.

I understand that I may revoke this consent at any time in one of the following ways:

1. If I am under the care of a health care agency, by making an oral, written, or other act of communication to a physician or other health care provider of a health care agency;

2. If I am not under the care of a health care agency, by destroying my do-not-resuscitate form, removing all do-not-resuscitate identification from my person, and notifying my attending physician of the revocation;

3. If I am incapacitated and under the care of a health care agency, my representative may revoke the do-not-resuscitate consent by written notification of a physician or other health care provider of the health care agency or by oral notification of my attending physician; or

4. If I am incapacitated and not under the care of a health care agency, my representative may revoke the do-not-resuscitate consent by destroying the do-not-resuscitate form, removing all do-not-resuscitate identification from my person, and notifying my attending physician of the revocation.

I give permission for this information to be given to EMS personnel, doctors, nurses, and other health care providers. I hereby state that I am making an informed decision and agree to a do-not-resuscitate order.

_____ OR _____

Signature of Person

Signature of Representative

(Limited to an attorney-in-fact for health care decisions acting under the Durable Power of Attorney Act, a health care proxy acting under the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, an agent acting pursuant to the Oklahoma Health Care Decisions Act, or a guardian of

the person appointed under the Oklahoma
Guardianship and Conservatorship Act.)

This DNR consent form was signed in my
presence.

_____	_____	_____
Date	Signature of Witness	Address
	_____	_____
	Signature of Witness	Address

BACK OF PAGE

CERTIFICATION OF PHYSICIAN

(This form is to be used by an attending physician only to certify that an incapacitated person without a representative would not have consented to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest. An attending physician of an incapacitated person without a representative must know by clear and convincing evidence that the incapacitated person, when competent, decided on the basis of information sufficient to constitute informed consent that such person would not have consented to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest. Clear and convincing evidence for this purpose shall include oral, written, or other acts of communication between the patient, when competent, and family members, health care providers, or others close to the patient with knowledge of the patient's desires.)

I hereby certify, based on clear and convincing evidence presented to me, that I believe that _____

Name of Incapacitated Person

would not have consented to the administration of cardiopulmonary resuscitation in the event of cardiac or respiratory arrest.

Therefore, in the event of cardiac or respiratory arrest, no chest

compressions, artificial ventilation, intubations, defibrillation, or emergency cardiac medications are to be initiated.

Physician's Signature/Date

Physician's Name (PRINT)

Physician's Address/Phone

C. Witnesses must be individuals who are eighteen (18) years of age or older who are not legatees, devisees or heirs at law.

D. It is the intention of the Legislature that the preferred, but not required, do-not-resuscitate form in Oklahoma shall be the form set out in subsection B of this section.

SECTION 26. This act shall become effective November 1, 2001.

48-1-5237 KSM 6/12/15