

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1596

By: Howard of the Senate

and

Stinson of the House

COMMITTEE SUBSTITUTE

An Act relating to health care power of attorney;
creating the Oklahoma Health Care Agent Act;
providing short title; defining terms; authorizing
execution of power of attorney for health care;
establishing requirements for execution of power of
attorney for health care; specifying when power of
attorney for health care is effective; establishing
requirements for revocation of power of attorney for
health care; creating optional form for execution of
power of attorney for health care; requiring certain
communication by health care provider; requiring
record of certain information; requiring certain
compliance by health care provider; providing
exceptions; requiring notice of certain
noncompliance; authorizing access to certain
information; establishing immunity from liability for
certain actions; creating certain presumption;
stating effectiveness of copy; construing provisions;
providing for judicial relief; requiring retroactive
application of provisions to certain documents;
amending 63 O.S. 2021, Sections 1-1973, 3102.4,
3105.2, 3105.4, 3131.3 and 3131.5, which relate to
the Home Care Act, the Oklahoma Advance Directive
Act, the Physician Orders for Life-Sustaining
Treatment Act, and the Oklahoma Do-Not-Resuscitate
Act; updating statutory references; providing for
codification; and declaring an emergency.

1
2 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

3 SECTION 1. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3111.1 of Title 63, unless there
5 is created a duplication in numbering, reads as follows:

6 This act shall be known and may be cited as the "Oklahoma Health
7 Care Agent Act".

8 SECTION 2. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 3111.2 of Title 63, unless there
10 is created a duplication in numbering, reads as follows:

11 As used in the Oklahoma Health Care Agent Act:

12 1. "Advance directive for health care" means any writing
13 executed in accordance with the requirements of Section 3101.4 of
14 Title 63 of the Oklahoma Statutes;

15 2. "Agent" means an individual designated in a power of
16 attorney for health care to make a health care decision for the
17 individual granting the power;

18 3. "Attending physician" means the physician who has primary
19 responsibility for the treatment and care of a patient;

20 4. "Capacity" means an individual's ability to understand and
21 appreciate the nature and implications of a health care decision, to
22 make an informed choice regarding the alternatives presented
23 including understanding and appreciating the significant benefits
24

1 and risks, and to make and communicate a health care decision in an
2 unambiguous manner;

3 5. "Health care" means any care, treatment, service, or
4 procedure to maintain, diagnose, or otherwise affect an individual's
5 physical or mental condition;

6 6. "Health care decision" means a decision made by an
7 individual or the individual's agent regarding the individual's
8 health care including:

9 a. selection and discharge of health care providers and
10 facilities,

11 b. consent to or refusal of any care, treatment, service,
12 or procedure to maintain, diagnose, or otherwise
13 affect a physical or mental condition, and

14 c. signing a do-not-resuscitate consent in accordance
15 with the provisions of the Oklahoma Do-Not-Resuscitate
16 Act, Section 3131.1 et seq. of Title 63 of the
17 Oklahoma Statutes.

18 Health care decision shall not include the ability of the agent to
19 make decisions about the withholding or withdrawal of nutrition or
20 hydration;

21 7. "Health care facility" means any public or private
22 organization, corporation, authority, partnership, sole
23 proprietorship, association, agency, network, joint venture, or
24 other entity that is established and appropriately licensed in this

1 state to administer or provide health care services. Health care
2 facility includes but is not limited to hospitals, medical centers,
3 ambulatory surgery centers, physicians' offices, clinics, nursing
4 homes, rehabilitation centers, home care agencies, hospices, and
5 long-term care agencies;

6 8. "Health care provider" means a person who is licensed,
7 certified, or otherwise authorized by the laws of this state to
8 administer health care in the ordinary course of business or
9 practice of a profession;

10 9. "Individual instruction" means an individual's direction
11 concerning a health care decision for the individual;

12 10. "Person" means a person eighteen (18) years of age or older
13 or a minor who may consent to have services provided by health
14 professionals pursuant to Section 2602 of Title 63 of the Oklahoma
15 Statutes;

16 11. "Physician" means an individual authorized to practice
17 medicine or osteopathy pursuant to Chapter 11 or Chapter 14 of Title
18 59 of the Oklahoma Statutes;

19 12. "Power of attorney for health care" means the designation
20 of an agent to make health care decisions for the individual
21 granting the power;

22 13. "Reasonably available" means readily able to be contacted
23 without undue effort and willing and able to act in a timely manner
24 considering the urgency of the patient's health care needs; and

1 14. "State" means a state of the United States, the District of
2 Columbia, the Commonwealth of Puerto Rico, or a territory or insular
3 possession subject to the jurisdiction of the United States.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 3111.3 of Title 63, unless there
6 is created a duplication in numbering, reads as follows:

7 A. A person with capacity may give an oral or written
8 individual instruction. The instruction may be limited to take
9 effect only if a specified condition arises.

10 B. A person with capacity may execute a power of attorney for
11 health care, which may authorize the agent to make any health care
12 decision the principal could have made while having capacity other
13 than the withholding or withdrawal of life-sustaining treatment,
14 nutrition, or hydration, which may only be authorized in compliance
15 with the Oklahoma Advance Directive Act; provided, however, the
16 power of attorney for health care may authorize the agent to sign a
17 do-not-resuscitate consent in accordance with the provisions of the
18 Oklahoma Do-Not-Resuscitate Act, Section 3131.1 et seq. of Title 63
19 of the Oklahoma Statutes. The power shall be in writing and signed
20 by the principal. The power remains in effect notwithstanding the
21 principal's later incapacity and may include individual
22 instructions. Unless related to the principal by blood, marriage,
23 or adoption, an agent may not be an owner, operator, or employee of
24

1 a residential long-term health care institution at which the
2 principal is receiving care.

3 C. Unless otherwise specified in a power of attorney for health
4 care, the authority of an agent becomes effective only upon a
5 determination that the principal lacks capacity and ceases to be
6 effective upon a determination that the principal has recovered
7 capacity.

8 D. Unless otherwise specified in a power of attorney for health
9 care, a determination that an individual lacks or has recovered
10 capacity, or that another condition exists that affects an
11 individual instruction or the authority of an agent, shall be made
12 by the attending physician.

13 E. An agent shall make health care decisions in accordance with
14 the principal's individual instructions, if any, and other wishes to
15 the extent known to the agent. Otherwise, the agent shall make the
16 decision in accordance with the agent's determination of the
17 principal's best interest. In determining the principal's best
18 interest, the agent shall consider the principal's personal values
19 to the extent known to the agent.

20 F. A health care decision made by an agent for a principal is
21 effective without judicial approval.

22 G. A power of attorney for health care shall be signed by the
23 principal and witnessed by two (2) individuals who are at least
24

1 eight (18) years of age and who are not legatees, devisees, or
2 heirs at law of the principal.

3 H. A power of attorney for health care is valid for purposes of
4 this act if it is in substantial compliance with this act,
5 regardless of when or where executed or communicated.

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 3111.4 of Title 63, unless there
8 is created a duplication in numbering, reads as follows:

9 A. An individual may revoke the designation of an agent by a
10 signed writing or by personally informing the health care provider
11 at any time and in any manner that communicates an intent to revoke.

12 B. A health care provider or agent who is informed of a
13 revocation shall promptly communicate the fact of the revocation to
14 the attending physician and to any health care facility at which the
15 patient is receiving care.

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

20 D. A power of attorney for health care that conflicts with an
21 earlier power of attorney for health care revokes the earlier power
22 of attorney to the extent of the conflict.

23

24

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3111.5 of Title 63, unless there
3 is created a duplication in numbering, reads as follows:

4 The following form may, but need not, be used to create a power
5 of attorney for health care. The other sections of this act govern
6 the effect of this form or any other writing used to create a power
7 of attorney for health care. An individual may complete or modify
8 all or any part of the following form to the extent consistent with
9 subsection B of Section 3 of this act:

10 HEALTH CARE POWER OF ATTORNEY

11 You have the right to give instructions about your own health
12 care. You also have the right to name someone else to make health
13 care decisions for you. This form lets you do either or both of
14 these things. If you use this form, you may complete or modify all
15 or any part of it. You are free to use a different form.

16 This form is a power of attorney for health care that lets you
17 name another individual as agent to make health care decisions for
18 you if you become incapable of making your own decisions or if you
19 want someone else to make those decisions for you now even though
20 you are still capable. You may also name an alternate agent to act
21 for you if your first choice is not willing, able, or reasonably
22 available to make decisions for you. Unless related to you, your
23 agent may not be an owner, operator, or employee of a residential
24 long-term health care institution at which you are receiving care.

1 Unless the form you sign limits the authority of your agent,
2 your agent may make all health care decisions for you. This form
3 has a place for you to limit the authority of your agent. You need
4 not limit the authority of your agent if you wish to rely on your
5 agent for all health care decisions that may have to be made. If
6 you choose not to limit the authority of your agent, your agent will
7 have the right to:

8 1. Consent or refuse consent to any care, treatment, service,
9 or procedure to maintain, diagnose, or otherwise affect a physical
10 or mental condition;

11 2. Select or discharge health care providers and facilities;
12 and

13 3. Sign a do-not-resuscitate consent.

14 **This form does not authorize the agent to make any decisions**
15 **directing the withholding of life-sustaining treatment, nutrition,**
16 **or hydration, which may only be authorized in compliance with the**
17 **Oklahoma Advance Directive Act. This form may authorize the agent**
18 **to sign a do-not-resuscitate consent.**

19 After completing this form, sign and date the form at the end.
20 It is required that two other individuals sign as witnesses. These
21 witnesses must be at least 18 years old and not related to you or
22 named to inherit from you. Give a copy of the signed and completed
23 form to your physician, to any other health care providers you may
24 have, to any health care facility at which you are receiving care,

1 and to any health care agents you have named. You should talk to
2 the person you have named as agent to make sure that he or she
3 understands your wishes and is willing to take the responsibility.

4 You have the right to revoke this power of attorney for health
5 care or replace this form at any time.

6 POWER OF ATTORNEY FOR HEALTH CARE

7 1. DESIGNATION OF AGENT: I designate the following individual
8 as my agent to make health care decisions for me:

9 _____
10 (name of individual you choose as agent)

11 _____
12 (address) (city) (state) (zip code)

13 _____
14 (home phone) (work phone)

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

18 _____
19 (name of individual you choose as first alternate agent)

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

22 _____
23 (home phone) (work phone)

24

1 OPTIONAL: If I revoke the authority of my agent and first
2 alternate agent or if neither is willing, able, or reasonably
3 available to make a health care decision for me, I designate as my
4 second alternate agent:

5 _____
6 (name of individual you choose as second alternate agent)
7 _____

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

10 (home phone) (work phone)

11 2. AGENT'S AUTHORITY: My agent is authorized to make all
12 health care decisions (not to include the withholding or withdrawal
13 of life-sustaining treatment) for me that I could make if I were
14 able, except as I state here:

15 _____
16 _____
17 _____

18 (Add additional sheets if needed.)

19 3. WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's
20 authority becomes effective when my attending physician determines
21 that I am unable to make my own health care decisions unless I mark
22 the following box. If I mark this box [], my agent's authority
23 to make health care decisions for me takes effect immediately.

24 _____

1 (Initials)

2 4. AGENT'S OBLIGATION: My agent shall make health care
3 decisions for me in accordance with this power of attorney for
4 health care and my other wishes to the extent known to my agent. To
5 the extent my wishes are unknown, my agent shall make health care
6 decisions for me in accordance with what my agent determines to be
7 in my best interest. In determining my best interest, my agent
8 shall consider the decisions I would have made myself to the extent
9 known to my agent.

10 _____

11 (Initials)

12 5. RELIEF FROM PAIN: Except as I state in the following space,
13 I direct that treatment for alleviation of pain or discomfort be
14 provided at all times, even if it hastens my death:

15 _____
16 _____

17 6. OTHER WISHES: (If you do not agree with any of the optional
18 choices above and wish to write your own, or if you wish to add to
19 the instructions you have given above, you may do so here.) I
20 direct that:

21 _____
22 _____

23 (Add additional sheets if needed.)

24

1 A. Before implementing a health care decision made for a
2 patient, the attending physician, if possible, shall promptly
3 communicate to the patient the decision made and the identity of the
4 person making the decision.

5 B. An attending physician who knows of the existence of a power
6 of attorney for health care or a revocation of a power of attorney
7 for health care shall promptly record its existence in the patient's
8 medical record and, if it is in writing, shall request a copy and if
9 one is furnished shall arrange for its maintenance in the medical
10 record. An attending physician who makes or is informed of a
11 determination that a patient lacks or has recovered capacity shall
12 promptly record the determination in the patient's medical record
13 and communicate the determination to the patient, if possible, and
14 to any person then authorized to make health care decisions for the
15 patient.

16 C. Except as provided in subsections D and E of this section, a
17 health care provider or facility providing care to a patient shall:

18 1. Comply with an individual instruction of the patient and
19 with a reasonable interpretation of that instruction made by a
20 person then authorized to make health care decisions for the
21 patient; and

22 2. Comply with a health care decision for the patient made by a
23 person then authorized to make health care decisions for the patient
24

1 to the same extent as if the decision had been made by the patient
2 while having capacity.

3 D. An attending physician or health care provider may decline
4 to comply with an individual instruction or health care decision for
5 reasons of conscience. A health care facility may decline to comply
6 with an individual instruction or health care decision if the
7 instruction or decision is contrary to a policy of the facility
8 which is expressly based on reasons of conscience and if the policy
9 was timely communicated to the patient or to a person then
10 authorized to make health care decisions for the patient.

11 E. A health care provider or facility may decline to comply
12 with an individual instruction or health care decision that requires
13 medically ineffective or non-beneficial health care or health care
14 contrary to generally accepted health care standards applicable to
15 the health care provider or facility.

16 F. A health care provider or facility that declines to comply
17 with an individual instruction or health care decision shall:

18 1. Promptly so inform the patient, if possible, and any person
19 then authorized to make health care decisions for the patient;

20 2. Provide continuing care to the patient until a transfer can
21 be effected; and

22 3. Unless the patient or person then authorized to make health
23 care decisions for the patient refuses assistance, immediately make
24 all reasonable efforts to assist in the transfer of the patient to

1 another health care provider or facility that is willing to comply
2 with the instruction or decision.

3 G. A health care provider or facility may not require or
4 prohibit the execution or revocation of an advance health care
5 directive as a condition for providing health care.

6 H. The provisions of this section shall not be construed to
7 supersede or authorize noncompliance with the requirements of the
8 Oklahoma Advance Directive Act as provided in Section 3101.9 of
9 Title 63 of the Oklahoma Statutes.

10 SECTION 7. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 3111.7 of Title 63, unless there
12 is created a duplication in numbering, reads as follows:

13 Unless otherwise specified in a power of attorney for health
14 care, a person then authorized to make health care decisions for a
15 patient has the same rights as the patient to request, receive,
16 examine, copy, and consent to the disclosure of medical or any other
17 health care information.

18 SECTION 8. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3111.8 of Title 63, unless there
20 is created a duplication in numbering, reads as follows:

21 A. A health care provider or facility acting in good faith and
22 in accordance with generally accepted health care standards
23 applicable to the health care provider or facility shall not be
24

1 subject to civil or criminal liability or to discipline for
2 unprofessional conduct for:

3 1. Complying with a health care decision of a person apparently
4 having authority to make a health care decision for a patient;

5 2. Declining to comply with a health care decision of a person
6 based on a belief that the person then lacked authority; or

7 3. Complying with a power of attorney for health care and
8 assuming that the designation was valid when made and has not been
9 revoked or terminated.

10 B. An individual acting as agent under this act shall not be
11 subject to civil or criminal liability or to discipline for
12 unprofessional conduct for health care decisions made in good faith.

13 SECTION 9. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3111.9 of Title 63, unless there
15 is created a duplication in numbering, reads as follows:

16 A. This act shall not be construed to affect the right of an
17 individual to make health care decisions while having capacity to do
18 so.

19 B. An individual is presumed to have capacity to make a health
20 care decision and to give or revoke powers of attorney for health
21 care.

22 SECTION 10. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 3111.10 of Title 63, unless
24 there is created a duplication in numbering, reads as follows:

1 A copy of a written power of attorney for health care or
2 revocation of a power of attorney for health care has the same
3 effect as the original.

4 SECTION 11. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 3111.11 of Title 63, unless
6 there is created a duplication in numbering, reads as follows:

7 A. This act shall not be construed to create a presumption
8 concerning the intention of an individual who has not made or who
9 has revoked a power of attorney for health care.

10 B. This act shall not be construed to authorize or require a
11 health care provider or facility to provide health care contrary to
12 generally accepted health care standards applicable to the health
13 care provider or facility; provided, this provision shall not be
14 construed to supersede or authorize noncompliance with the
15 requirements of the Oklahoma Advance Directive Act as provided in
16 Section 3101.9 of Title 63 of the Oklahoma Statutes.

17 C. This act shall not be construed to authorize an agent to
18 consent to the admission of an individual to a mental health care
19 facility unless the individual's written directive expressly so
20 provides.

21 D. This act shall not affect other statutes of this state
22 governing treatment for mental illness of an individual
23 involuntarily committed to a mental health care facility under
24 Chapter 1 of Title 43A of the Oklahoma Statutes.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3111.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

On petition of a patient, the patient's agent, or a health care provider or facility involved with the patient's care, the court may enjoin or direct a health care decision or order other equitable relief. A proceeding under this section shall be governed by Title 12 of the Oklahoma Statutes.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3111.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any document made in substantial compliance with the requirements of the Oklahoma Health Care Agent Act shall have full force and effect including such documents made prior to the effective date of this act.

SECTION 14. AMENDATORY 63 O.S. 2021, Section 1-1973, is amended to read as follows:

Section 1-1973. A. Patients who are capable of self-administering their own medications without assistance shall be encouraged and allowed to do so. However, a certified nurse aide may assist a patient whose condition is medically stable with the self-administration of routine, regularly scheduled medications that are intended to be self-administered, if the following conditions are met:

1 1. For an oral medication, the medication shall have been
2 placed in a medication planner by a registered nurse, a relative of
3 the patient or nursing staff of an Oklahoma licensed home health or
4 hospice agency that is currently serving the patient; and

5 2. For all other forms, the certified nurse aide shall assist
6 with self-administration consistent with a dispensed prescription's
7 label or the package directions of an over-the-counter medication.

8 B. For purposes of this section, self-administered medications
9 include both legend and over-the-counter oral dosage forms, topical
10 dosage forms and topical ophthalmic, otic and nasal dosage forms,
11 including solutions, suspensions, sprays and inhalers.

12 C. Assistance with self-administration of medication by a
13 certified nurse aide may occur only upon a documented request by,
14 and the written informed consent of, a patient or the patient's
15 surrogate, guardian or attorney-in-fact.

16 D. For purposes of this section, assistance with self-
17 administration of medication includes:

18 1. Taking an oral medication out of a pill planner and bringing
19 it to the patient;

20 2. Placing an oral dosage in the patient's hand or placing the
21 dosage in another container and helping the patient by lifting the
22 container to his or her mouth;

23 3. If ordered by a physician, placing an oral medication in
24 food before the patient self-administers;

1 4. Crushing an oral medication pursuant to orders given by a
2 physician or health care professional;

3 5. Applying topical medications; and

4 6. Keeping a record of when a patient receives assistance with
5 self-administration pursuant to this section.

6 E. For purposes of this section, assistance with self-
7 administration of medication does not include:

8 1. Removing oral medication from any container other than a
9 pill planner;

10 2. Mixing, compounding, converting or calculating medication
11 doses;

12 3. The preparation of syringes for injection or the
13 administration of medications by any injectable route;

14 4. Administration of medications through intermittent positive
15 pressure breathing machines;

16 5. Administration of medications by way of a tube inserted in a
17 cavity of the body;

18 6. Administration of parenteral preparations;

19 7. Irrigations or debriding agents used in the treatment of a
20 skin condition;

21 8. Rectal, urethral, or vaginal preparations;

22 9. Medications ordered by the physician or health care
23 professional with prescriptive authority to be given "as needed",
24 unless the order is written with specific parameters that preclude

1 independent judgment on the part of the certified nurse aide, and at
2 the request of a competent patient;

3 10. Medications for which the time of administration, the
4 amount, the strength of dosage, the method of administration or the
5 reason for administration requires judgment or discretion on the
6 part of the certified nurse aide; or

7 11. Assistance with the self-administration of medication by a
8 certified nurse aide in an assisted living center through home care
9 services as provided for in Section 1-890.8 of Title 63 of the
10 Oklahoma Statutes.

11 F. Assistance with the self-administration of medication by a
12 certified nurse aide as described in this section does not
13 constitute administration as defined in Section 353.1 of Title 59 of
14 the Oklahoma Statutes.

15 G. The State Commissioner of Health may by rule establish
16 procedures and interpret terms as necessary to implement the
17 provisions of this section.

18 H. For purposes of this section:

19 1. "Informed consent" means advising the patient, or the
20 patient's surrogate, guardian or attorney-in-fact, that the patient
21 may be receiving assistance with self-administration of medication
22 from a certified nurse aide; and

23 2. "Attorney-in-fact" means an attorney-in-fact authorized to
24 act pursuant to the ~~Uniform Durable Power of Attorney Act, Sections~~

~~1071 through 1077 of Title 58 of the Oklahoma Statutes~~ Oklahoma Health Care Agent Act, with authority to act regarding the patient's health and medical care decisions, subject to the limitations under ~~paragraph 1 of subsection B of Section 1072.1 of Title 58 of the Oklahoma Statutes~~ the Oklahoma Health Care Agent Act.

SECTION 15. AMENDATORY 63 O.S. 2021, Section 3102.4, is amended to read as follows:

Section 3102.4. A. When an adult patient or a person under eighteen (18) years of age who may consent to have services provided by health professionals under Section 2602 of this title is persistently unconscious, incompetent or otherwise mentally or physically incapable of communicating, a person who is reasonably available and willing in the following classes, in the order of priority set forth in this subsection, shall be authorized to make health care decisions for the patient under the same standard as that applicable to making life-sustaining treatment decisions under Section 3101.16 of this title, excluding any person who is disqualified from exercising such authority by Section 3102.5 of this title. If those within a class disagree, a majority within the class may make a health care decision for the patient. However, a provider of health care to the patient or any member or members of any of the following classes may petition a court that would have jurisdiction over a guardianship proceeding concerning the patient under Section 1-115 of Title 30 of the Oklahoma Statutes to seek an

1 order directing a different health care decision on the ground that
2 the health care decision or decisions made violate the standard
3 required by this section, granting another member or other members
4 from among the following classes (notwithstanding the statutory
5 order of priority) supervening authority to make health care
6 decisions for the patient on the ground that clear and convincing
7 evidence demonstrates they are more likely to adhere to that
8 standard, or both. Upon motion by any party, the court shall issue
9 an order requiring that pending its decision on the merits and the
10 resolution of any appeal the patient be provided with health care of
11 which denial, in reasonable medical judgment, would be likely to
12 result in or hasten the death of the patient, unless its provision
13 would require denial of the same health care to another patient.
14 The classes are as follows:

15 1. A general guardian of the person appointed pursuant to
16 subsection A of Section 3-112 of Title 30 of the Oklahoma Statutes
17 or a limited guardian of the person appointed pursuant to subsection
18 B of Section 3-112 of Title 30 of the Oklahoma Statutes with
19 authority to make personal medical decisions as determined under
20 paragraph 5 of subsection B of Section 3-113 of Title 30 of the
21 Oklahoma Statutes;

22 2. A health care proxy, or alternate health care proxy,
23 designated by the patient, as defined in paragraph 6 of Section
24 3101.3 of Title 63 of the Oklahoma Statutes;

1 3. An attorney-in-fact authorized to act pursuant to the
2 ~~Uniform Durable Power of Attorney Act, Sections 1071 through 1077 of~~
3 ~~Title 58 of the Oklahoma Statutes~~ Oklahoma Health Care Agent Act,
4 with authority to act regarding the patient's health and medical
5 care decisions, subject to the limitations under ~~paragraph 1 of~~
6 ~~subsection B of Section 1072.1 of Title 58 of the Oklahoma Statutes~~
7 the Oklahoma Health Care Agent Act;

8 4. The patient's spouse;

9 5. Adult children of the patient;

10 6. Parents of the patient;

11 7. Adult siblings;

12 8. Other adult relatives of the patient in order of kinship; or

13 9. Close friends of the patient who have maintained regular
14 contact with the patient sufficient to be familiar with the
15 patient's personal values. Execution of an affidavit stating
16 specific facts and circumstances documenting such contact
17 constitutes prima facie evidence of close friendship.

18 B. Prior to making a health care decision for a patient
19 pursuant to subsection A of this section, a person shall provide to
20 the health care provider or health care entity a signed copy of the
21 following statement to be entered into the patient's medical record:

22 "I hereby certify that:

23 I have not been convicted of, pleaded guilty to or pleaded no
24 contest to the crimes of abuse, verbal abuse, neglect or financial

1 exploitation by a caregiver; exploitation of an elderly person or
2 disabled adult; or abuse, neglect, exploitation or sexual abuse of a
3 child;

4 I have not been found to have committed abuse, verbal abuse or
5 exploitation by a final investigative finding of the State
6 Department of Health or Department of Human Services or by a finding
7 of an administrative law judge, unless it was overturned on appeal;
8 and

9 I have not been criminally charged as a person responsible for
10 the care of a vulnerable adult with a crime resulting in the death
11 or near death of a vulnerable adult."

12 SECTION 16. AMENDATORY 63 O.S. 2021, Section 3105.2, is
13 amended to read as follows:

14 Section 3105.2. As used in the Physician Orders for Life-
15 Sustaining Treatment Act:

16 1. "Attorney-in-fact" means an attorney-in-fact authorized to
17 act pursuant to the ~~Uniform Durable Power of Attorney Act, Sections~~
18 ~~1071 through 1077 of Title 58 of the Oklahoma Statutes~~ Oklahoma
19 Health Care Agent Act, with authority to act regarding the patient's
20 health and medical care decisions, subject to the limitations under
21 ~~paragraph 1 of subsection B of Section 1072.1 of Title 58 of the~~
22 ~~Oklahoma Statutes~~ the Oklahoma Health Care Agent Act;

23 2. "Guardian" means a general guardian of the person appointed
24 pursuant to subsection A of Section 3-112 of Title 30 of the

Oklahoma Statutes or a limited guardian of the person appointed pursuant to subsection B of Section 3-112 of Title 30 of the Oklahoma Statutes with the authority to make personal medical decisions as determined under paragraph 5 of subsection B of Section 3-113 of Title 30 of the Oklahoma Statutes;

3. "Health care provider" means a person who is licensed, certified or otherwise authorized by the laws of this state to administer health care in the ordinary course of business or practice of a profession;

4. "Health care proxy" means a health care proxy ~~for alternate health care proxy~~ authorized to act pursuant to the Oklahoma Advance Directive Act, Sections 3101.1 through 3101.16 ~~of Title 63 of the Oklahoma Statutes~~ this title, as defined in paragraph 6 of Section 3101.3 ~~of Title 63 of the Oklahoma Statutes~~ this title; and

5. "Other legally authorized person" means a person, other than a minor's custodial parent or guardian, the patient or the patient's attorney-in-fact, guardian or health care proxy, who has authority to make health care decisions for the patient under common law.

SECTION 17. AMENDATORY 63 O.S. 2021, Section 3105.4, is amended to read as follows:

Section 3105.4. 1. At the top of the first page of the standardized format Oklahoma physician orders for life-sustaining treatment form the following wording in all capitals shall appear against a contrasting color background: "FORM SHALL ACCOMPANY

PERSON WHEN TRANSFERRED OR DISCHARGED"; at the bottom of the first page the following wording in all capitals shall appear against a contrasting color background: "HIPAA PERMITS DISCLOSURE TO HEALTH CARE PROFESSIONALS AND PROXY DECISION MAKERS AS NECESSARY FOR TREATMENT".

2. There shall be an introductory section, the left block of which shall contain the name "Oklahoma Physician Orders for Life-Sustaining Treatment (POLST)" followed by the words, "This Physician Order set is based on the patient's current medical condition and wishes and is to be reviewed for potential replacement in the case of a substantial change in either, as well as in other cases listed under F. Any section not completed indicates full treatment for that section. Photocopy or fax copy of this form is legal and valid." and the right block of which shall contain lines for the patient's name, the patient's date of birth and the effective date of the form followed by the statement, "Form must be reviewed at least annually."

3. In Section A of the form, the left block shall contain, in bold font, "A. Check One", and the right block shall be headed, in bold font, "Cardiopulmonary Resuscitation (CPR): Person has no pulse and is not breathing." below which there shall be a checkbox followed by "Attempt Resuscitation (CPR)", then a checkbox followed by "Do Not Attempt Resuscitation (DNR/ no CPR)", and below which

1 shall be the words, "When not in cardiopulmonary arrest, follow
2 orders in B, C and D below."

3 4. In Section B of the form, the left block shall contain, in
4 bold, "B. Check One", and the right block shall be headed, in bold,
5 "Medical Interventions: Person has pulse and/or is breathing."

6 Below this there shall be a checkbox followed by, in bold, "Full
7 Treatment" followed by, "Includes the use of intubation, advanced
8 airway interventions, mechanical ventilation, defibrillation or
9 cardio version as indicated, medical treatment, intravenous fluids,
10 and cardiac monitor as indicated. Transfer to hospital if
11 indicated. Include intensive care. Includes treatment listed under
12 "Limited Interventions" and "Comfort Measures", followed by, in
13 bold, "Treatment Goal: Attempt to preserve life by all medically
14 effective means."

15 Below this there shall be a checkbox followed by, in bold,
16 "Limited Interventions" followed by, "Includes the use of medical
17 treatment, oral and intravenous medications, intravenous fluids,
18 cardiac monitoring as indicated, noninvasive bi-level positive
19 airway pressure, a bag valve mask or other advanced airway
20 interventions. Includes treatment listed under "Comfort Measures",
21 followed by, "Do not use intubation or mechanical ventilation.
22 Transfer to hospital if indicated. Avoid intensive care." followed
23 by, in bold, "Treatment Goal: Attempt to preserve life by basic
24 medical treatments."

1 Below this there shall be a checkbox followed by, in bold,
2 "Comfort Measures only" followed by, "Includes keeping the patient
3 clean, warm and dry; use of medication by any route; positioning,
4 wound care and other measures to relieve pain and suffering. Use
5 oxygen, suction and manual treatment of airway obstruction as needed
6 for comfort. Transfer from current location to intermediate
7 facility only if needed and adequate to meet comfort needs and to
8 hospital only if comfort needs cannot otherwise be met in the
9 patient's current location (e.g., hip fracture; if intravenous route
10 of comfort measures is required)."

11 Below this there shall be, in italics, "Additional Orders:"
12 followed by an underlined space for other instructions.

13 5. In Section C of the form, the left block shall contain, in
14 bold, "C. Check One" and the right block shall be headed, in bold,
15 "Antibiotics".

16 Below this there shall be a checkbox followed by, in bold, "Use
17 antibiotics to preserve life."

18 Below this there shall be a checkbox followed by, in bold,
19 "Trial period of antibiotics if and when infection occurs." After
20 this there shall be, in italics, "*Include goals below in E."

21 Below this there shall be a checkbox followed by, in bold,
22 "Initially, use antibiotics only to relieve pain and discomfort."
23 After this there shall be, in italics, "+Contact patient or
24 patient's representative for further direction."

Below this there shall be, in italics, "Additional Orders:" followed by an underlined space for other instructions.

6. In Section D of the form, the left block shall contain, in bold, "D. Check One in Each Column", and the right block shall be headed in bold, "Assisted Nutrition and Hydration", below which shall be "Administer oral fluids and nutrition, if necessary by spoon feeding, if physically possible." Below these the right block shall be divided into three columns.

The leftmost column shall be headed, "TPN (Total Parenteral Nutrition-provision of nutrition into blood vessels)." Below this there shall be a checkbox followed by, in bold, "TPN long-term" followed by "if needed". Below this there shall be a checkbox followed by, in bold, "TPN for a trial period*". Below this there shall be a checkbox followed by, in bold, "Initially, no TPN+".

The middle column shall be headed "Tube Feeding". Below this there shall be a checkbox followed by, in bold, "Long-term feeding tube" followed by "if needed". Below this there shall be a checkbox followed by, in bold, "Feeding tube for a trial period*". Below this there shall be a checkbox followed by, in bold, "Initially, no feeding tube".

The rightmost column shall be headed, "Intravenous (IV) Fluids for Hydration". Below this there shall be a checkbox followed by, in bold, "Long-term IV fluids" followed by "if needed". Below this there shall be a checkbox followed by, in bold, "IV fluids for a

trial period*". Below this there shall be a checkbox followed by, in bold, "Initially, no IV fluids+".

Running below all the columns there shall be, in italics, "Additional Orders:" followed by an underlined space for other instructions, followed by, in italics, "*Include goals below in E. +Contact patient or patient's representative for further direction."

7. In Section E of the form, the left block shall contain, in bold, "E. Check all that apply" and the right block shall be headed, in bold, "Patient Preferences as a Basis for this POLST Form" shall include the following:

- a. below the heading there shall be a box including the words, in bold, "Patient Goals/Medical Condition:" followed by an adequate space for such information,
- b. below this there shall be a checkbox followed by, "The patient has an advance directive for health care in accordance with Sections 3101.4 or 3101.14 of Title 63 of the Oklahoma Statutes." Below that there shall be a checkbox followed by, "The patient has a durable power of attorney for health care decisions in accordance with ~~paragraph 1 of subsection B of Section 1072.1 of Title 58 of the Oklahoma Statutes~~ the Oklahoma Health Care Agent Act." Below that shall be the indented words, "Date of execution" followed by an underlined space. Below that shall be the words, "If

POLST not being executed by patient: We certify that this POLST is in accordance with the patient's advance directive." Below this there shall be an underlined space underneath which shall be positioned the words, "Name and Position (print) Signature" and "Signature of Physician",

c. below these shall be the words, "Directions given by:" and below that a checkbox followed by "Patient", a checkbox followed by "Minor's custodial parent or guardian", a checkbox followed by "Attorney-in-fact", a checkbox followed by "Health care proxy", and a checkbox followed by "Other legally authorized person:" followed by an underlined space. Beneath or beside the checkbox and "Other legally authorized person:" and the underlined space shall be the words "Basis of Authority:" followed by an underlined space, and

d. below these shall be a four-column table with four rows. In the top row the first column shall be blank; the second column shall have the words, "Printed Name"; the third column shall have the word, "Signature", and the fourth column shall have the word, "Date". In the remaining rows the second through fourth columns shall be blank. In the first

1 column of these rows, in the second row shall be the
2 words, "Attending physician"; in the third row shall
3 be the words, "Patient or other individual checked
4 above (patient's representative)"; and in the fourth
5 row shall be the words, "Health care professional
6 preparing form (besides doctor)."

7 8. Section F of the form, which shall have the heading, in
8 bold, "Information for Patient or Representative of Patient Named on
9 this Form", shall include the following language, appearing in bold
10 on the form:

11 "The POLST form is always voluntary and is usually for persons
12 with advanced illness. Before providing information for or signing
13 it, carefully read "Information for Patients and Their Families -
14 Your Medical Treatment Rights Under Oklahoma Law", which the health
15 care provider must give you. It is especially important to read the
16 sections on CPR and food and fluids, which have summaries of
17 Oklahoma laws that may control the directions you may give. POLST
18 records your wishes for medical treatment in your current state of
19 health. Once initial medical treatment is begun and the risks and
20 benefits of further therapy are clear, your treatment wishes may
21 change. Your medical care and this form can be changed to reflect
22 your new wishes at any time. However, no form can address all the
23 medical treatment decisions that may need to be made. An advance
24 health care directive is recommended, regardless of your health

1 status. An advance directive allows you to document in detail your
2 future health care instructions and/or name a health care agent to
3 speak for you if you are unable to speak for yourself.

4 The State of Oklahoma affirms that the lives of all are of equal
5 dignity regardless of age or disability and emphasizes that no one
6 should ever feel pressured to agree to forego life-preserving
7 medical treatment because of age, disability or fear of being
8 regarded as a burden.

9 If this form is for a minor for whom you are authorized to make
10 health care decisions, you may not direct denial of medical
11 treatment in a manner that would violate the child abuse and neglect
12 laws of Oklahoma. In particular, you may not direct the withholding
13 of medically indicated treatment from a disabled infant with life-
14 threatening conditions, as those terms are defined in 42 U.S.C.,
15 Section 5106g or regulations implementing it and 42 U.S.C., Section
16 5106a."

17 9. Section G of the form, which shall have the heading, in
18 bold, "Directions for Completing and Implementing Form", shall
19 include the following three subdivisions:

- 20 a. the first subdivision, entitled "COMPLETING POLST",
21 shall have the following language with the words, "The
22 signature of the patient or the patient's
23 representative is required" appearing in bold on the
24 form:

1 "POLST must be reviewed and prepared in consultation
2 with the patient or the patient's representative after
3 that person has been given a copy of "Information for
4 Patients and Their Families - Your Medical Treatment
5 Rights Under Oklahoma Law". POLST must be reviewed
6 and signed by a physician to be valid. Be sure to
7 document the basis for concluding the patient had or
8 lacked capacity at the time of execution of the form
9 in the patient's medical record. If the patient lacks
10 capacity, any current advance directive form must be
11 reviewed and the patient's representative and
12 physician must both certify that POLST complies with
13 it. The signature of the patient or the patient's
14 representative is required; however, if the patient's
15 representative is not reasonably available to sign the
16 original form, a copy of the completed form with the
17 signature of the patient's representative must be
18 placed in the medical record as soon as practicable
19 and "on file" must be written on the appropriate
20 signature line on this form.",

- 21 b. the second subdivision, entitled "IMPLEMENTING POLST",
22 shall have the following language:
23 "If a minor protests a directive to deny the minor
24 life-preserving medical treatment, the denial of

treatment may not be implemented pending issuance of a judicial order resolving the conflict. A health care provider unwilling to comply with POLST must comply with the transfer and treatment pending transfer requirements of Section 3101.9 of Title 63 of the Oklahoma Statutes as well as those of the Nondiscrimination in Treatment Act, Sections 3090.2 and 3090.3 of Title 63 of the Oklahoma Statutes", and

c. the third subdivision, entitled "REVIEWING POLST", shall have the following language:

"This POLST must be reviewed at least annually or earlier if:

The patient is admitted to or discharged from a medical care facility; there is substantial change in the patient's health status; or the treatment preferences of the patient or patient's representative change."

The same requirements for participation of the patient or patient's representative, and signature by both a physician and the patient or the patient's representative, that are described under "COMPLETING POLST" shall also apply when POLST is reviewed, and must be documented in Section I.

1 10. Section H of the form, which shall have the heading, in
2 bold, "REVOCATION OF POLST", shall have the following language, with
3 the words specified below appearing in bold on the form:

4 "If POLST is revised or becomes invalid, write in bold the word
5 "VOID" in large letters on the front of the form. After voiding the
6 form a new form may be completed. A patient with capacity or the
7 individual or individuals authorized to sign on behalf of the
8 patient in Section E of this form may void this form. If no new
9 form is completed, full treatment and resuscitation is to be
10 provided, except as otherwise authorized by Oklahoma law."

11 11. Section I of the form, which shall have the heading, in
12 bold, "REVIEW SECTION", followed by: "Periodic review confirms
13 current form or may require completion of new form," shall include
14 the following columns and a number of rows determined by the Office
15 of the Attorney General:

- 16 a. Date of Review,
- 17 b. Location of Review,
- 18 c. Patient or Representative Signature,
- 19 d. Physician Signature, and
- 20 e. Outcome of Review.

21 Each row in column (5) shall include a checkbox followed by,
22 "FORM CONFIRMED - No Change", below which there shall be a checkbox
23 followed by, "FORM VOIDED, see updated form.", below which there
24 shall be a checkbox followed by, "FORM VOIDED, no new form."

1 A final section of the form, which shall have the heading, in
2 bold, "Contact Information:", shall include two rows of four
3 columns. In the first column, the first row shall include
4 "Patient/Representative" followed by an adequate space for such
5 information, and the second column shall include "Health Care
6 Professional Preparing Form" followed by an adequate space for such
7 information. In the second column both rows shall include
8 "Relationship" followed by an adequate space for such information;
9 in the third column both rows shall include "Phone Number" followed
10 by an adequate space for such information; and in the fourth column
11 both rows shall include "Email Address" followed by an adequate
12 space for such information.

13 SECTION 18. AMENDATORY 63 O.S. 2021, Section 3131.3, is
14 amended to read as follows:

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

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

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

24

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

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

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

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

18 7. "Health care agency" means an agency established to
19 administer or provide health care services and which is commonly
20 known by a wide variety of titles including, but not limited to,
21 hospitals, medical centers, ambulatory health care facilities,
22 physicians' offices and clinics, extended care facilities operated
23 in connection with hospitals, nursing homes, extended care
24

1 facilities operated in connection with rehabilitation centers, home
2 care agencies and hospices;

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

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

12 10. "Representative" means an attorney-in-fact for health care
13 decisions acting pursuant to the ~~Uniform Durable Power of Attorney~~
14 ~~Act~~ Oklahoma Health Care Agent Act, a health care proxy acting
15 pursuant to the Oklahoma ~~Rights of the Terminally Ill or~~
16 ~~Persistently Unconscious~~ Advance Directive Act, or a guardian of the
17 person appointed under the Oklahoma Guardianship and Conservatorship
18 Act.

19 SECTION 19. AMENDATORY 63 O.S. 2021, Section 3131.5, is
20 amended to read as follows:

21 Section 3131.5. A. For persons under the care of a health care
22 agency, a do-not-resuscitate order shall, if issued, be in
23 accordance with the policies and procedures of the health care
24

1 agency as long as not in conflict with the provisions of the
2 Oklahoma Do-Not-Resuscitate Act.

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

5 FRONT PAGE

6 OKLAHOMA DO-NOT-RESUSCITATE (DNR) CONSENT FORM

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

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

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

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

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

24

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 to a physician or other health care provider of the health care agency or by oral notification to 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~~ Oklahoma Health Care Agent Act, a health care proxy acting under the Oklahoma Advance Directive Act or a guardian of the person appointed under the Oklahoma Guardianship and Conservatorship Act.)

1 This DNR consent form was signed in my
2 presence.

3 _____
4 Date

Signature of Witness

Address

5 _____
6 Signature of Witness

Address

7 BACK OF PAGE

8 CERTIFICATION OF PHYSICIAN

9 (This form is to be used by an attending physician only to
10 certify that an incapacitated person without a representative would
11 not have consented to the administration of cardiopulmonary
12 resuscitation in the event of cardiac or respiratory arrest. An
13 attending physician of an incapacitated person without a
14 representative must know by clear and convincing evidence that the
15 incapacitated person, when competent, decided on the basis of
16 information sufficient to constitute informed consent that such
17 person would not have consented to the administration of
18 cardiopulmonary resuscitation in the event of cardiac or respiratory
19 arrest. Clear and convincing evidence for this purpose shall
20 include oral, written, or other acts of communication between the
21 patient, when competent, and family members, health care providers,
22 or others close to the patient with knowledge of the patient's
23 desires.)
24

1 I hereby certify, based on clear and convincing evidence
2 presented to me, that I believe that _____
3
4 Name of Incapacitated Person
5 would not have consented to the administration of cardiopulmonary
6 resuscitation in the event of cardiac or respiratory arrest.
7 Therefore, in the event of cardiac or respiratory arrest, no chest
8 compressions, artificial ventilation, intubations, defibrillation,
9 or emergency cardiac medications are to be initiated.

10 _____
11 Physician's Signature/Date Physician's Name (PRINT)
12 _____

13 Physician's Address/Phone
14

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

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

20 SECTION 20. It being immediately necessary for the preservation
21 of the public peace, health or safety, an emergency is hereby
22 declared to exist, by reason whereof this act shall take effect and
23 be in full force from and after its passage and approval.
24

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