

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 ENGROSSED SENATE
5 BILL NO. 1094

By: Howard of the Senate

and

Stinson of the House

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8
9 An Act relating to the Oklahoma Health Care Agent
10 Act; amending Sections 3 and 5, Chapter 136, O.S.L.
11 2022 (63 O.S. Supp. 2022, Sections 3111.3 and
12 3111.5), which relate to execution for power of
13 attorney for health care and form; modifying
14 signature requirement for power of attorney for
15 health care; updating statutory reference; modifying
16 certain form; and declaring an emergency.

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

18 SECTION 1. AMENDATORY Section 3, Chapter 136, O.S.L.
19 2022 (63 O.S. Supp. 2022, Section 3111.3), is amended to read as
20 follows:

21 Section 3111.3. A. A person with capacity may give an oral or
22 written individual instruction. The instruction may be limited to
23 take effect only if a specified condition arises.

24 B. A person with capacity may execute a power of attorney for
health care, which may authorize the agent to make any health care
decision the principal could have made while having capacity other

1 than the withholding or withdrawal of life-sustaining treatment,
2 nutrition, or hydration, which may only be authorized in compliance
3 with the Oklahoma Advance Directive Act; provided, however, the
4 power of attorney for health care may authorize the agent to sign a
5 do-not-resuscitate consent in accordance with the provisions of the
6 Oklahoma Do-Not-Resuscitate Act, Section 3131.1 et seq. of Title 63
7 of the Oklahoma Statutes. The power shall be in writing and signed
8 by the principal. The power remains in effect notwithstanding the
9 principal's later incapacity and may include individual
10 instructions. Unless related to the principal by blood, marriage,
11 or adoption, an agent may not be an owner, operator, or employee of
12 a residential long-term health care institution at which the
13 principal is receiving care.

14 C. Unless otherwise specified in a power of attorney for health
15 care, the authority of an agent becomes effective only upon a
16 determination that the principal lacks capacity and ceases to be
17 effective upon a determination that the principal has recovered
18 capacity.

19 D. Unless otherwise specified in a power of attorney for health
20 care, a determination that an individual lacks or has recovered
21 capacity, or that another condition exists that affects an
22 individual instruction or the authority of an agent, shall be made
23 by the attending physician.

1 E. An agent shall make health care decisions in accordance with
2 the principal's individual instructions, if any, and other wishes to
3 the extent known to the agent. Otherwise, the agent shall make the
4 decision in accordance with the agent's determination of the
5 principal's best interest. In determining the principal's best
6 interest, the agent shall consider the principal's personal values
7 to the extent known to the agent.

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

10 G. A power of attorney for health care shall be signed by the
11 principal ~~and~~ in the presence of a notary public or witnessed by two
12 (2) individuals who are at least eighteen (18) years of age and who
13 are not legatees, devisees, or heirs at law of the principal.

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

17 SECTION 2. AMENDATORY Section 5, Chapter 136, O.S.L.
18 2022 (63 O.S. Supp. 2022, Section 3111.5), is amended to read as
19 follows:

20 Section 3111.5. The following form may, but need not, be used
21 to create a power of attorney for health care. The other sections
22 of this act govern the effect of this form or any other writing used
23 to create a power of attorney for health care. An individual may
24 complete or modify all or any part of the following form to the

1 extent consistent with subsection B of Section ~~3~~ 3111.3 of this ~~act~~
2 title:

3 HEALTH CARE POWER OF ATTORNEY

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

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

18 Unless the form you sign limits the authority of your agent,
19 your agent may make all health care decisions for you. This form
20 has a place for you to limit the authority of your agent. You need
21 not limit the authority of your agent if you wish to rely on your
22 agent for all health care decisions that may have to be made. If
23 you choose not to limit the authority of your agent, your agent will
24 have the right to:

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

4 2. Select or discharge health care providers and facilities;
5 and

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

7 This form does not authorize the agent to make any decisions
8 directing the withholding or withdrawal of life-sustaining
9 treatment, nutrition, or hydration, which may only be authorized in
10 compliance with the Oklahoma Advance Directive Act, except that this
11 form may authorize the agent to sign a do-not-resuscitate consent.

12 After completing this form, sign and date the form at the end.
13 It is required that two other individuals sign as witnesses. These
14 witnesses must be at least 18 years old and not related to you or
15 named to inherit from you. Give a copy of the signed and completed
16 form to your physician, to any other health care providers you may
17 have, to any health care facility at which you are receiving care,
18 and to any health care agents you have named. You should talk to
19 the person you have named as agent to make sure that he or she
20 understands your wishes and is willing to take the responsibility.

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

23 POWER OF ATTORNEY FOR HEALTH CARE
24

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

3 _____
4 (name of individual you choose as agent)

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

7 _____
8 (home phone) (work phone)

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

12 _____
13 (name of individual you choose as first alternate agent)

14 _____
15 (address) (city) (state) (zip code)

16 _____
17 (home phone) (work phone)

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

22 _____
23 (name of individual you choose as second alternate agent)

24

1 _____
2 (address) (city) (state) (zip code)
3 _____

4 (home phone) (work phone)

5 2. AGENT'S AUTHORITY: My agent is authorized to make all
6 health care decisions (not to include the withholding or withdrawal
7 of life-sustaining treatment, nutrition, or hydration, other than
8 signing a do-not-resuscitate consent) for me that I could make if I
9 were able, except as I state here:
10 _____
11 _____
12 _____

13 (Add additional sheets if needed.)

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

20 (Initials)

21 4. AGENT'S OBLIGATION: My agent shall make health care
22 decisions for me in accordance with this power of attorney for
23 health care and my other wishes to the extent known to my agent. To
24 the extent my wishes are unknown, my agent shall make health care

1 decisions for me in accordance with what my agent determines to be
2 in my best interest. In determining my best interest, my agent
3 shall consider the decisions I would have made myself to the extent
4 known to my agent.

5 _____

6 (Initials)

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

10 _____
11 _____

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

16 _____
17 _____

18 (Add additional sheets if needed.)

19 7. EFFECT OF COPY: A copy of this form has the same effect as
20 the original.

21 8. SIGNATURES: Sign and date the form here:

22 _____
23 (date) (sign your name)

24 _____

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(print your name)
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(state)

County of _____

OR

Second witness

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(print name)
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(address)

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(city)          (state)
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(signature of witness)

(date)

SECTION 3. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.
3

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
5 04/10/2023 - DO PASS.
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