

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 749

Short Title: Health Care Power of Attorney.

(Public)

Sponsors: Senator Daniel.

Referred to: Human Resources.

April 23, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH AN ADDITIONAL METHOD FOR AN INDIVIDUAL TO
3 DESIGNATE AN ATTORNEY-IN-FACT TO MAKE HEALTH CARE
4 DECISIONS.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 32A of the General Statutes is amended by adding a new
7 Article to read:

8 **“ARTICLE 3.**

9 **“HEALTH CARE POWERS OF ATTORNEY.**

10 **“§ 32A-15. General Purpose of this Article.**

11 (a) The General Assembly recognizes as a matter of public policy the
12 fundamental right of an individual to control the decisions relating to his or her medical
13 care, and that such right may be exercised on behalf of the individual by an agent
14 chosen by the individual.

15 (b) The purpose of this Article is to establish an additional, nonexclusive method
16 for an individual to exercise his or her right to give, withhold, or withdraw consent to
17 medical treatment when the individual lacks sufficient understanding or capacity to
18 make or communicate health care decisions.

19 **“§ 32A-16. Definitions.**

20 (a) A Health Care Power of Attorney is a written instrument, executed under
21 seal, signed in the presence of two qualified witnesses, and acknowledged before a
22 Notary Public, pursuant to which an attorney-in-fact or agent is appointed to act for the
23 Principal in matters relating to the health care of the Principal, and which substantially
24 meets the requirements of this Article.

1 (b) For purposes of this Article, 'health care' means any care, treatment, service,
2 or procedure to maintain, diagnose, treat, or provide for the Principal's physical or
3 mental health or personal care and comfort including, life-sustaining procedures.

4 (c) For purposes of this article, life-sustaining procedures are those forms of care
5 or treatment which only serve to artificially prolong the dying process and may include
6 mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and other
7 forms of treatment which restore or maintain vital bodily functions, but do not include
8 care necessary to provide comfort or to alleviate pain.

9 (d) Qualified witnesses to a Health Care Power of Attorney for the purposes of
10 this Article, means witnesses in whose presence the Principal has executed the Health
11 Care Power of Attorney, who believe the Principal to be of sound mind and who state
12 that they (i) are not related within the third degree to the Principal or to the Principal's
13 spouse, (ii) do not know or have a reasonable expectation that they would be entitled to
14 any portion of the estate of the Principal upon his death under any Will of the Principal
15 or codicil thereto then existing or under the Interstate Succession Act as it then
16 provides, (iii) are not the attending physician of the Principal, or an employee of the
17 attending physician, or an employee of a health facility in which the Principal is a
18 patient, or an employee of a nursing home or any group-care home in which the
19 Principal resides, and (iv) do not have a claim against any portion of the estate of the
20 Principal at the time of the Principal's execution of the Health Care Power of Attorney.

21 **"§ 32A-17. Who may make a Health Care Power of Attorney.**

22 Any person having understanding and capacity to make and communicate health
23 care decisions, who is 18 years of age or over, may make a Health Care Power of
24 Attorney. The person making the Health Care Power of Attorney is referred to in this
25 Article as the Principal.

26 **"§ 32A-18. Who may act as a Health Care Attorney-in-Fact.**

27 Any competent person who is not engaged in providing health care to the Principal
28 for remuneration, and who is 18 years of age or over, may act as a Health Care
29 Attorney-in-Fact. The person appointed as a Health Care Attorney-in-Fact is referred to
30 in this Article as the Health Care Agent.

31 **"§ 32A-19. Extent of authority; limitations of authority.**

32 (a) A Principal, pursuant to a Health Care Power of Attorney, may grant to the
33 Health Care Agent full power and authority to make health care decisions to the fullest
34 extent that the Principal could make such decisions for himself or herself if he or she
35 had understanding and capacity to make and communicate health care decisions,
36 including without limitation, the power to authorize withholding or discontinuing life-
37 sustaining procedures. A Health Care Power of Attorney may also contain or
38 incorporate by reference any lawful guidelines or directions relating to the health care of
39 the Principal as the Principal deems appropriate.

40 (b) A Health Care Power of Attorney may authorize the Health Care Agent to
41 exercise any and all rights the Principal may have with respect to anatomical gifts, the
42 authorization of any autopsy and the disposition of remains.

1 (c) A Health Care Power of Attorney may contain, and the authority of the
2 Health Care Agent shall be subject to, such specific limitations or restrictions as the
3 Principal deems appropriate.

4 (d) The Powers and authority granted to the Health Care Agent pursuant to a
5 Health Care Power of Attorney shall be limited to the matters addressed therein, and,
6 except as necessary to exercise such powers and authority relating to health care, shall
7 not confer any power or authority with respect to the property or financial affairs of the
8 Principal.

9 **"§ 32A-20. Effectiveness and duration; revocation.**

10 (a) A Health Care Power of Attorney shall become effective when and if the
11 physician or physicians designated by the Principal determines in writing that the
12 Principal lacks sufficient understanding or capacity to make or communicate decisions
13 relating to the health care of the Principal, and shall continue in effect during the
14 incapacity of the Principal. Such determination shall be made by the attending
15 physician if the physician or physicians designated by the Principal is unavailable or is
16 otherwise unable or unwilling to make such determination.

17 (b) A Health Care Power of Attorney shall be revoked by the death of the
18 Principal and may be revoked by the Principal at any time, so long as the Principal is
19 capable of making and communicating health care decisions. The Principal may
20 exercise such right of revocation by executing and acknowledging an instrument of
21 revocation, by executing and acknowledging a subsequent Health Care Power of
22 Attorney, or by any other manner by which the Principal is able to communicate his or
23 her intent to revoke. Such revocation shall become effective only upon communication
24 to each Health Care Agent named in the revoked Health Care Power of Attorney and to
25 the Principal's attending physician.

26 (c) The authority of a Health Care Agent who is the spouse of the Principal shall
27 be revoked upon the entry by a court of a decree of divorce or separation between the
28 Principal and such Health Care Agent; provided that such divorce or separation shall not
29 cause the revocation of the Health Care Power of Attorney if a successor Health Care
30 Agent is designated.

31 **"§ 32A-21. Appointment, resignation, removal and substitution.**

32 (a) A Health Care Power of Attorney may contain provisions relating to the
33 appointment, resignation, removal and substitution of the Health Care Agent.

34 (b) If all Health Care Agents named in the instrument or substituted shall die or
35 shall for any reason fail or refuse to act, and all methods of substitution have been
36 exhausted, the Health Care Power of Attorney shall cease to be effective.

37 **"§ 32A-22. Relation of the Health Care Agent to a court appointed fiduciary and**
38 **to a general attorney-in-fact.**

39 (a) If, following the execution of a Health Care Power of Attorney, a court of
40 competent jurisdiction appoints a guardian of the person of the Principal, or a general
41 guardian with powers over the person of the Principal, the Health Care Power of
42 Attorney shall cease to be effective upon the appointment and qualification of such
43 guardian.

1 (b) A Principal may nominate, by a Health Care Power of Attorney, the guardian
2 of the person of the Principal if a guardianship proceeding is thereafter commenced.
3 The court shall make its appointment in accordance with the Principal's most recent
4 nomination in an unrevoked Health Care Power of Attorney, except for good cause
5 shown.

6 (c) The execution of a Health Care Power of Attorney shall not revoke, restrict or
7 otherwise affect any nonhealth care powers granted by the Principal to an attorney-in-
8 fact pursuant to a general power of attorney; provided that the powers granted to the
9 Health Care Agent with respect to health care matters shall be superior to any similar
10 powers granted by the Principal to an attorney-in-fact under a general Power of
11 Attorney.

12 (d) A Health Care Power of Attorney may be combined with or incorporated into
13 a general Power of Attorney which is executed in accordance with the requirements of
14 this Article.

15 **"§ 32A-23. Article 2, Chapter 32A, not applicable.**

16 The provisions of Article 2 of this Chapter shall not be applicable to a Health Care
17 Power of Attorney executed pursuant to this Article.

18 **"§ 32A-24. Reliance on Health Care Power of Attorney; Defense.**

19 (a) Any physician or other health care provider involved in the medical care of
20 the Principal may rely upon the authority of the Health Care Agent contained in a
21 signed and acknowledged Health Care Power of Attorney in the absence of actual
22 knowledge of revocation of such Health Care Power of Attorney.

23 (b) All health care decisions made by a Health Care Agent pursuant to a Health
24 Care Power of Attorney during any period following a determination that the Principal
25 lacks understanding or capacity to make or communicate health care decisions shall
26 have the same effect as if the Principal was not incapacitated and was present and acting
27 on his or her own behalf. Any health care provider relying in good faith on the
28 authority of a Health Care Agent shall be protected to the full extent of the power
29 conferred upon the Health Care Agent, and no person so relying on the authority of the
30 Health Care Agent shall be liable, by reason of such reliance, for actions taken pursuant
31 to a decision of the Health Care Agent.

32 (c) The withholding or withdrawal of life-sustaining procedures by or under the
33 orders of a physician pursuant to the authorization of a Health Care Agent shall not be
34 considered suicide or the cause of death for any civil or criminal purpose nor shall it be
35 considered unprofessional conduct or a lack of professional competence. Any person,
36 institution or facility, including without limitation the Health Care Agent and the
37 attending physician, against whom criminal or civil liability is asserted because of
38 conduct described in this section may interpose this section as a defense.

39 **"§ 32A-25. Statutory Form Health Care Power of Attorney.**

40 The use of the following form in the creation of a Health Care Power of Attorney is
41 lawful and, when used, it shall meet the requirements of and be construed in accordance
42 with the provisions of this Article:

43 ‘(Notice: This document gives the person you designate (your "Health Care Agent"
44) broad powers to make health care decisions for you, including the power to consent to

1 your doctor not giving treatment or stopping treatment necessary to keep you alive.
2 This power exists only as to those health care decisions to which you are unable to give
3 informed consent.

4 This form does not impose a duty on your Health Care Agent to exercise granted
5 powers, but when a power is exercised, your Health Care Agent will have to use due
6 care to act in your best interests and in accordance with this document. Because the
7 powers granted by this document are broad and sweeping, you should discuss your
8 wishes concerning life-sustaining procedures with your Health Care Agent.

9 Use of this form in the creation of a Health Care Power of Attorney is lawful and is
10 authorized pursuant to Section 32A-25 of the North Carolina General Statutes.
11 However, use of this form is an optional and nonexclusive method for creating such a
12 power of attorney and Section 32A-25 does not bar the use of any other or different
13 form of power of attorney for health care which meets the statutory requirements.)

14 1. Designation of Health Care Agent.

15 I,....., being of sound mind, hereby appoint

16 Name:.....

17 Home Address:.....

18 Home Telephone No.....Work Telephone No.....

19 as my Health Care Attorney-in-Fact (herein referred to as my "Health Care Agent") to
20 act for me and in my name (in any way I could act in person) to make health care
21 decisions for me as authorized in this document.

22 If the person named as my Health Care Agent is not reasonably available or is
23 unable or unwilling to act as my Agent, then I appoint the following persons (each to act
24 alone and successively, in the order named), to serve in that capacity: (Optional)

25 A. Name:.....

26 Home Address:.....

27 Home Telephone No.....Work Telephone No.....

28 B. Name:.....

29 Home Address:.....

30 Home Telephone No.....Work Telephone No.....

31 Each successor Health Care Agent designated hereunder shall be vested with the same
32 power and duties as if originally named as my Health Care Agent hereunder.

33 2. Effectiveness of Appointment.

34 (Notice: This Health Care Power of Attorney may be amended or revoked by you at
35 any time by executing a revocation or a new Health Care Power of Attorney and
36 notifying your Health Care Agent and your attending physician in writing of the
37 amendment or revocation.)

38 Absent amendment or revocation, the authority granted in this document will
39 become effective when and if the physician or physicians designated below determine
40 that I lack sufficient understanding or capacity to make or communicate decisions
41 relating to my health care and will continue in effect during such incapacity, until my
42 death. The foregoing determination shall be made by the following physician or
43 physicians (You may include here a designation of your choice, including your
44 attending physician, or any other physician. You may also name two or more

1 physicians, if desired, both of whom must make the foregoing determination before the
2 authority granted to the Health Care Agent becomes effective.):

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11 3. General Statement of Authority Granted.

12 Except as indicated in Section 4 below, I hereby grant to my Health Care Agent
13 named above full power and authority to make health care decisions on my behalf,
14 including, but not limited to, the following:

- 15 A. To request, review and receive any information, verbal or written,
16 regarding my physical or mental health, including, but not limited to,
17 medical and hospital records, and to consent to the disclosure of this
18 information;
- 19 B. To employ or discharge my health care providers;
- 20 C. To consent to and authorize my admission to and discharge from a
21 hospital, nursing or convalescent home or other institution;
- 22 D. To give consent for, to withdraw consent for, or to withhold consent
23 for, X ray, anesthesia, medication, surgery and all other diagnostic and
24 treatment procedures prescribed (ordered) by or under the
25 authorization of a licensed physician, dentist or podiatrist. This
26 authorization specifically includes the power to consent to measures
27 for relief of pain.
- 28 E. To authorize the withholding or withdrawal of life-sustaining
29 procedures or measures when and if my physician determines that I am
30 terminally ill, permanently in a coma, suffer severe dementia, or am in
31 a persistent vegetative state. Life-sustaining procedures or measures
32 are those forms of medical care which only serve to artificially prolong
33 the dying process and may include mechanical ventilation, dialysis,
34 antibiotics, artificial nutrition and hydration, and other forms of
35 medical treatment which restore or maintain vital bodily functions.
36 Life-sustaining procedures do not include care necessary to provide
37 comfort or alleviate pain.

38 I DESIRE THAT MY LIFE NOT BE PROLONGED BY LIFE-
39 SUSTAINING PROCEDURES OR MEASURES IF I AM
40 TERMINALLY ILL, PERMANENTLY IN A COMA,
41 SUFFER SEVERE DEMENTIA OR AM IN A PERSISTENT
42 VEGETATIVE STATE.

1 F. To exercise any right I may have to make a disposition of any part or
2 all of my body for medical purposes, to donate my organs, to authorize
3 an autopsy and to direct the disposition of my remains.

4 G. To take any lawful actions that may be necessary to carry out these
5 decisions, including the granting of releases of liability to medical
6 providers.

7 4. Special Provisions and Limitations.

8 (Notice: The above grant of power is intended to be as broad as possible so that your
9 Health Care Agent will have authority to make any decisions you could make to obtain
10 or terminate any type of health care. If you wish to limit the scope of your Agent's
11 powers, you may do so in this section.)

12 In exercising the authority to make health care decisions on my behalf, the
13 authority of my Health Care Agent is subject to the following special provisions and
14 limitations (Here you may include any specific limitations you deem appropriate such
15 as: your own definition of when life-sustaining treatment should be withheld or
16 discontinued, or instructions to refuse any specific types of treatment that are
17 inconsistent with your religious beliefs or unacceptable to you for any other reason.):

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26 5. Guardianship Provision.

27 If it becomes necessary for a court to appoint a guardian of my person, I nominate
28 my Health Care Agent acting under this document to be the guardian of my person, to
29 serve without bond or security.

30 6. Reliance of Third Parties on Health Care Agent.

31 A. No person who relies in good faith upon the authority of or any
32 representations by my Agent shall be liable to me, my estate, my heirs,
33 successors, assigns, or personal representatives, for recognizing my
34 Agent's authority.

35 B. The powers conferred on my Health Care Agent by this document may
36 be exercised by my Health Care Agent alone, and my Health Care
37 Agent's signature or act under the authority granted in this document
38 may be accepted by persons as fully authorized by me and with the
39 same force and effect as if I were personally present, competent, and
40 acting on my own behalf. All acts performed in good faith by my
41 Health Care Agent hereunder are done with my consent and shall have
42 the same validity and effect as if I were present and exercised the
43 powers myself, and shall inure to the benefit of and bind me, my
44 estate, my heirs, successors, assigns, and personal representatives. The

1 authority of my agent hereunder shall be superior to and binding upon
2 my family, relatives, friends, and others.

3 7. Miscellaneous Provisions.

4 A. I hereby revoke any prior Health Care Power of Attorney.

5 B. My Health Care Agent shall be entitled to sign, execute, deliver, and
6 acknowledge any contract or other document that may be necessary,
7 desirable, convenient or proper in order to exercise and carry out any
8 of the powers and authorities described in this document and to incur
9 reasonable costs on my behalf incident to the exercise of such powers;
10 provided, however, that except as shall be necessary in order to
11 exercise the powers described in this document relating to my health
12 care, my Health Care Agent shall not have any authority over my
13 property or financial affairs.

14 C. My Health Care Agent and my Health Care Agent's estate, heirs,
15 successors, and assigns are hereby released and forever discharged by
16 me, my estate, my heirs, successors, and assigns and personal
17 representatives from all liability and from all claims or demands of all
18 kinds arising out of the acts or omissions of my Health Care Agent
19 pursuant to this document, except for willful misconduct or gross
20 negligence.

21 D. No act or omission of my Health Care Agent, or of any other person,
22 institution, or facility acting in good faith in reliance on the authority
23 of my Health Care Agent pursuant to this Health Care Power of
24 Attorney shall be considered suicide or the cause of my death for any
25 civil or criminal purposes nor shall it be considered unprofessional
26 conduct or as lack of professional competence. Any person,
27 institution, or facility against whom criminal or civil liability is
28 asserted because of conduct authorized by this durable power of
29 attorney for health care may interpose this document as a defense.

30 8. Signature of Principal.

31 By signing here, I indicate that I am mentally alert and competent, fully
32 informed as to the contents of this document, and understand the full import of this
33 grant of powers to my Health Care Agent.

34
35(SEAL).....

36 Signature of Principal Date

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38 9. Signature of Witnesses.

39 I hereby state that the Principal,....., being of sound mind, signed the
40 foregoing Health Care Power of Attorney in my presence and that I am not related to the
41 Principal by blood or marriage and I would not be entitled to any portion of the estate of
42 the Principal under any existing Will or codicil of the Principal or as an heir under the
43 Intestate Succession Act if the Principal died on this date without a Will. I also state
44 that I am not the Principal's attending physician or an employee of the Principal's

1 attending physician, or an employee of the health facility in which the Principal is a
2 patient or employee of a nursing home or any group care home where the Principal
3 resides. I further state that I do not have any claim against the Principal.

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5 Witness:.....Date:.....

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7 Witness:.....Date:.....

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9 STATE OF NORTH CAROLINA

10
11 COUNTY OF.....

12
13 **CERTIFICATE**

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15 I,....., a Notary Public for.....County, North Carolina, hereby
16 certify that.....appeared before me and swore to me and to the witnesses in my
17 presence that this instrument is a Health Care Power of Attorney, and that he/she
18 willingly and voluntarily made and executed it as his/her free act and deed for the
19 purposes expressed in it.

20 I further certify that.....and....., witnesses, appeared before me and
21 swore that they witnessed.....sign the attached Health Care Power of Attorney,
22 believing him/her to be of sound mind; and also swore that at the time they witnessed
23 the signing (i) they were not related within the third degree to him/her or his/her spouse,
24 and (ii) they did not know or have a reasonable expectation that they would be entitled
25 to any portion of his/her estate upon his/her death under any Will or codicil thereto then
26 existing or under the Intestate Succession Act as it provided at that time, and (iii) they
27 were not a physician attending him/her or an employee of an attending physician or an
28 employee of a health facility in which he/she was a patient or an employee of a nursing
29 home or any group-care home in which he/she resided, and (iv) they did not have a
30 claim against him/her. I further certify that I am satisfied as to the genuineness and due
31 execution of the instrument.

32 This the.....day of....., 199.....

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35 Notary Public

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37 My Commission Expires:

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40 (A copy of this form should be given to your Health Care Agent and any alternate
41 named herein, and to your physician and family members.)

42 I,....., agree to act as Health Care Agent for, pursuant to the
43 foregoing Power of Attorney for Health Care.

44 This the.....day of....., 19.....

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Sec. 2. This act is effective upon ratification; provided that this act is not intended and shall not be construed to invalidate Powers of Attorney executed prior to the effective date of the act which authorize an agent to make health care decisions for the principal.