

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 749  
Human Resources Committee Substitute Adopted 5/13/91

Short Title: Health Care Power of Attorney.

(Public)

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Sponsors:

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Referred to:

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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 this right may be exercised on behalf of the individual by an agent chosen  
14 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 As used in this Article, unless the context clearly requires otherwise, the following  
21 terms have the meanings specified:

22 (1) ‘Health care’ means any care, treatment, service, or procedure to  
23 maintain, diagnose, treat, or provide for the principal's physical or

1           mental health or personal care and comfort including, life-sustaining  
2           procedures.

3           (2) 'Health care agent' means the person appointed as a health care  
4           attorney-in-fact.

5           (3) 'Health care power of attorney' means a written instrument, executed  
6           under seal, signed in the presence of two qualified witnesses, and  
7           acknowledged before a notary public, pursuant to which an attorney-  
8           in-fact or agent is appointed to act for the principal in matters relating  
9           to the health care of the principal, and which substantially meets the  
10           requirements of this Article.

11           (4) 'Life-sustaining procedures' are those forms of care or treatment which  
12           only serve to artificially prolong the dying process and may include  
13           mechanical ventilation, dialysis, antibiotics, artificial nutrition and  
14           hydration, and other forms of treatment which restore or maintain vital  
15           bodily functions, but do not include care necessary to provide comfort  
16           or to alleviate pain.

17           (5) 'Principal' means the person making the health care power of attorney.

18           (6) 'Qualified witness' means a witness in whose presence the principal  
19           has executed the health care power of attorney, who believes the  
20           principal to be of sound mind and who states that he (i) is not related  
21           within the third degree to the principal nor to the principal's spouse,  
22           (ii) does not know nor have a reasonable expectation that he would be  
23           entitled to any portion of the estate of the principal upon the principal's  
24           death under any existing will or codicil of the principal or under the  
25           Intestate Succession Act as it then provides, (iii) is not the attending  
26           physician of the principal, nor an employee of the attending physician,  
27           nor an employee of a health facility in which the principal is a patient,  
28           nor an employee of a nursing home or any group-care home in which  
29           the principal resides, and (iv) does not have a claim against any portion  
30           of the estate of the principal at the time of the principal's execution of  
31           the health care power of attorney.

32 **"§ 32A-17. Who may make a health care power of attorney.**

33           Any person having understanding and capacity to make and communicate health  
34           care decisions, who is 18 years of age or older, may make a health care power of  
35           attorney.

36 **"§ 32A-18. Who may act as a health care attorney-in-fact.**

37           Any competent person who is not engaged in providing health care to the principal  
38           for remuneration, and who is 18 years of age or older, may act as a health care agent.

39 **"§ 32A-19. Extent of authority; limitations of authority.**

40           (a) A principal, pursuant to a health care power of attorney, may grant to the  
41           health care agent full power and authority to make health care decisions to the same  
42           extent that the principal could make such decisions for himself or herself if he or she  
43           had understanding and capacity to make and communicate health care decisions,  
44           including without limitation, the power to authorize withholding or discontinuing life-

1 sustaining procedures. A health care power of attorney may also contain or incorporate  
2 by reference any lawful guidelines or directions relating to the health care of the  
3 principal as the principal deems appropriate.

4 (b) A health care power of attorney may authorize the health care agent to  
5 exercise any and all rights the principal may have with respect to anatomical gifts, the  
6 authorization of any autopsy and the disposition of remains.

7 (c) A health care power of attorney may contain, and the authority of the health  
8 care agent shall be subject to, such specific limitations or restrictions as the principal  
9 deems appropriate.

10 (d) The powers and authority granted to the health care agent pursuant to a health  
11 care power of attorney shall be limited to the matters addressed in it, and, except as  
12 necessary to exercise such powers and authority relating to health care, shall not confer  
13 any power or authority with respect to the property or financial affairs of the principal.

14 (e) This act shall not be construed to invalidate a power of attorney that  
15 authorizes an agent to make health care decisions for the principal, which was executed  
16 prior to the effective date of this act.

17 **"§ 32A-20. Effectiveness and duration; revocation.**

18 (a) A health care power of attorney shall become effective when and if the  
19 physician or physicians designated by the principal determine in writing that the  
20 principal lacks sufficient understanding or capacity to make or communicate decisions  
21 relating to the health care of the principal, and shall continue in effect during the  
22 incapacity of the principal. The determination shall be made by the attending physician  
23 if the physician or physicians designated by the principal is unavailable or is otherwise  
24 unable or unwilling to make such determination.

25 (b) A health care power of attorney shall be revoked by the death of the principal  
26 and may be revoked by the principal at any time, so long as the principal is capable of  
27 making and communicating health care decisions. The principal may exercise such  
28 right of revocation by executing and acknowledging an instrument of revocation, by  
29 executing and acknowledging a subsequent health care power of attorney, or in any  
30 other manner by which the principal is able to communicate his or her intent to revoke.  
31 Such revocation shall become effective only upon communication to each health care  
32 agent named in the revoked health care power of attorney and to the principal's  
33 attending physician.

34 (c) The authority of a health care agent who is the spouse of the principal shall be  
35 revoked upon the entry by a court of a decree of divorce or separation between the  
36 principal and the health care agent; provided that if the health care power of attorney  
37 designates a successor health care agent, the successor shall serve as the health care  
38 agent, and the health care power of attorney shall not be revoked.

39 **"§ 32A-21. Appointment, resignation, removal, and substitution.**

40 (a) A health care power of attorney may contain provisions relating to the  
41 appointment, resignation, removal and substitution of the health care agent.

42 (b) If all health care agents named in the instrument or substituted die or for any  
43 reason fail or refuse to act, and all methods of substitution have been exhausted, the  
44 health care power of attorney shall cease to be effective.

1 **"§ 32A-22. Relation of the health care agent to a court-appointed fiduciary and to**  
2 **a general attorney-in-fact.**

3 (a) If, following the execution of a health care power of attorney, a court of  
4 competent jurisdiction appoints a guardian of the person of the principal, or a general  
5 guardian with powers over the person of the principal, the health care power of attorney  
6 shall cease to be effective upon the appointment and qualification of such guardian.

7 (b) A principal may nominate, by a health care power of attorney, the guardian of  
8 the person of the principal if a guardianship proceeding is thereafter commenced. The  
9 court shall make its appointment in accordance with the principal's most recent  
10 nomination in an unrevoked health care power of attorney, except for good cause  
11 shown.

12 (c) The execution of a health care power of attorney shall not revoke, restrict or  
13 otherwise affect any nonhealth care powers granted by the principal to an attorney-in-  
14 fact pursuant to a general power of attorney; provided that the powers granted to the  
15 health care agent with respect to health care matters shall be superior to any similar  
16 powers granted by the principal to an attorney-in-fact under a general power of attorney.

17 (d) A health care power of attorney may be combined with or incorporated into a  
18 general power of attorney which is executed in accordance with the requirements of this  
19 Article.

20 **"§ 32A-23. Article 2, Chapter 32A, not applicable.**

21 The provisions of Article 2 of this Chapter shall not be applicable to a health care  
22 power of attorney executed pursuant to this Article.

23 **"§ 32A-24. Reliance on health care power of attorney; defense.**

24 (a) Any physician or other health care provider involved in the medical care of  
25 the principal may rely upon the authority of the health care agent contained in a signed  
26 and acknowledged health care power of attorney in the absence of actual knowledge of  
27 revocation of the health care power of attorney.

28 (b) All health care decisions made by a health care agent pursuant to a health care  
29 power of attorney during any period following a determination that the principal lacks  
30 understanding or capacity to make or communicate health care decisions shall have the  
31 same effect as if the principal were not incapacitated and were present and acting on his  
32 or her own behalf. Any health care provider relying in good faith on the authority of a  
33 health care agent shall be protected to the full extent of the power conferred upon the  
34 health care agent, and no person so relying on the authority of the health care agent shall  
35 be liable, by reason of such reliance, for actions taken pursuant to a decision of the  
36 health care agent.

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

44 **"§ 32A-25. Statutory form health care power of attorney.**

1 The use of the following form in the creation of a health care power of attorney is  
2 lawful and, when used, it shall meet the requirements of and be construed in accordance  
3 with the provisions of this Article:

4 ‘(Notice: This document gives the person you designate your health care agent broad  
5 powers to make health care decisions for you, including the power to consent to your  
6 doctor not giving treatment or stopping treatment necessary to keep you alive. This  
7 power exists only as to those health care decisions for which you are unable to give  
8 informed consent.

9 This form does not impose a duty on your health care agent to exercise granted  
10 powers, but when a power is exercised, your health care agent will have to use due care  
11 to act in your best interests and in accordance with this document. Because the powers  
12 granted by this document are broad and sweeping, you should discuss your wishes  
13 concerning life-sustaining procedures with your health care agent.

14 Use of this form in the creation of a health care power of attorney is lawful and is  
15 authorized pursuant to this Chapter. However, use of this form is an optional and  
16 nonexclusive method for creating such a power of attorney and this Chapter does not  
17 bar the use of any other or different form of power of attorney for health care which  
18 meets the statutory requirements.)

19 1. Designation of health care agent.

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

21 Name:.....

22 Home Address:.....

23 Home Telephone Number.....Work Telephone Number.....

24 as my health care attorney-in-fact (herein referred to as my "health care agent" ) to act  
25 for me and in my name (in any way I could act in person) to make health care decisions  
26 for me as authorized in this document.

27 If the person named as my health care agent is not reasonably available or is unable  
28 or unwilling to act as my agent, then I appoint the following persons (each to act alone  
29 and successively, in the order named), to serve in that capacity: (Optional)

30 A. Name:.....

31 Home Address:.....

32 Home Telephone Number.....Work Telephone Number.....

33 B. Name:.....

34 Home Address:.....

35 Home Telephone Number.....Work Telephone Number.....

36 Each successor health care agent designated hereunder shall be vested with the same  
37 power and duties as if originally named as my health care agent.

38 2. Effectiveness of appointment.

39 (Notice: This health care power of attorney may be amended or revoked by you at any  
40 time by executing a revocation or a new health care power of attorney and notifying  
41 your health care agent and your attending physician in writing of the amendment or  
42 revocation.)

43 Absent amendment or revocation, the authority granted in this document shall  
44 become effective when and if the physician or physicians designated below determine

1 that I lack sufficient understanding or capacity to make or communicate decisions  
2 relating to my health care and will continue in effect during my incapacity, until my  
3 death. The foregoing determination shall be made by the following physician or  
4 physicians (You may include here a designation of your choice, including your  
5 attending physician, or any other physician. You may also name two or more  
6 physicians, if desired, both of whom must make the foregoing determination before the  
7 authority granted to the health care agent becomes effective.):

8 .....  
9 .....  
10 .....  
11 .....  
12 .....  
13 .....  
14 .....  
15 .....

16 3. General statement of authority granted.

17 Except as indicated in Section 4 below, I hereby grant to my health care agent  
18 named above full power and authority to make health care decisions on my behalf,  
19 including, but not limited to, the following:

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

43 I DESIRE THAT MY LIFE NOT BE PROLONGED BY LIFE-  
44 SUSTAINING PROCEDURES OR MEASURES IF I AM

TERMINALLY ILL, PERMANENTLY IN A COMA,  
SUFFER SEVERE DEMENTIA, OR AM IN A PERSISTENT  
VEGETATIVE STATE.

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

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

4. Special provisions and limitations.

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

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

.....  
.....  
.....  
.....  
.....  
.....  
.....

5. Guardianship provision.

If it becomes necessary for a court to appoint a guardian of my person, I nominate my health care agent acting under this document to be the guardian of my person, to serve without bond or security.

6. Reliance of third parties on health care agent.

A. No person who relies in good faith upon the authority of or any representations by my health care agent shall be liable to me, my estate, my heirs, successors, assigns, or personal representatives, for actions or omissions by my health care agent.

B. The powers conferred on my health care agent by this document may be exercised by my health care agent alone, and my health care agent's signature or act under the authority granted in this document may be accepted by persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. All acts performed in good faith by my health care agent hereunder are done with my consent and shall have the same validity

and effect as if I were present and exercised the powers myself, and shall inure to the benefit of and bind me, my estate, my heirs, successors, assigns, and personal representatives. The authority of my health care agent hereunder shall be superior to and binding upon my family, relatives, friends, and others.

7. Miscellaneous provisions.

- A. I hereby revoke any prior health care power of attorney.
- B. My health care agent shall be entitled to sign, execute, deliver, and acknowledge any contract or other document that may be necessary, desirable, convenient, or proper in order to exercise and carry out any of the powers described in this document and to incur reasonable costs on my behalf incident to the exercise of these powers; provided, however, that except as shall be necessary in order to exercise the powers described in this document relating to my health care, my health care agent shall not have any authority over my property or financial affairs.
- C. My health care agent and my health care agent's estate, heirs, successors, and assigns are hereby released and forever discharged by me, my estate, my heirs, successors, and assigns and personal representatives from all liability and from all claims or demands of all kinds arising out of the acts or omissions of my health care agent pursuant to this document, except for willful misconduct or gross negligence.
- D. No act or omission of my health care agent, or of any other person, institution, or facility acting in good faith in reliance on the authority of my health care agent pursuant to this health care power of attorney shall be considered suicide, nor the cause of my death for any civil or criminal purposes, nor shall it be considered unprofessional conduct or as lack of professional competence. Any person, institution, or facility against whom criminal or civil liability is asserted because of conduct authorized by this health care power of attorney may interpose this document as a defense.

8. Signature of principal.

By signing here, I indicate that I am mentally alert and competent, fully informed as to the contents of this document, and understand the full import of this grant of powers to my health care agent.

.....(SEAL).....  
Signature of Principal Date

9. Signature of Witnesses.

I hereby state that the Principal,....., being of sound mind, signed the foregoing health care power of attorney in my presence and that I am not related to the principal by blood or marriage and I would not be entitled to any portion of the estate of



1 the principal under any existing will or codicil of the principal or as an heir under the  
2 Intestate Succession Act if the principal died on this date without a will. I also state that  
3 I am not the principal's attending physician, nor an employee of the principal's attending  
4 physician, nor an employee of the health facility in which the principal is a patient, nor  
5 employee of a nursing home or any group care home where the principal resides. I  
6 further state that I do not have any claim against the principal.

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

9  
10 Witness:.....Date:.....

11  
12 STATE OF NORTH CAROLINA

13  
14 COUNTY OF.....

15  
16 **CERTIFICATE**

17  
18 I,....., a Notary Public for.....County, North Carolina, hereby  
19 certify that.....appeared before me and swore to me and to the witnesses in my  
20 presence that this instrument is a health care power of attorney, and that he/she willingly  
21 and voluntarily made and executed it as his/her free act and deed for the purposes  
22 expressed in it.

23 I further certify that.....and....., witnesses, appeared before me and  
24 swore that they witnessed.....sign the attached health care power of attorney,  
25 believing him/her to be of sound mind; and also swore that at the time they witnessed  
26 the signing (i) they were not related within the third degree to him/her or his/her spouse,  
27 and (ii) they did not know nor have a reasonable expectation that they would be entitled  
28 to any portion of his/her estate upon his/her death under any will or codicil thereto then  
29 existing or under the Intestate Succession Act as it provided at that time, and (iii) they  
30 were not a physician attending him/her nor an employee of an attending physician nor  
31 an employee of a health facility in which he/she was a patient nor an employee of a  
32 nursing home or any group-care home in which he/she resided, and (iv) they did not  
33 have a claim against him/her. I further certify that I am satisfied as to the genuineness  
34 and due execution of the instrument.

35 This the.....day of....., 19.....

36  
37 .....  
38 Notary Public

39  
40 My Commission Expires:

41 .....

42  
43 (A copy of this form should be given to your health care agent and any alternate  
44 named herein, and to your physician and family members.)

1 I,....., agree to act as health care agent for ....., pursuant to this  
2 health care power of attorney.

3 This the.....day of....., 19.....

4

5

6

.....' "  
Sec. 2. This act is effective upon ratification.