

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40645-MVz-36A

Short Title: GSC Advance Health Care Planning Documents.

(Public)

Sponsors: Representative Davis.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE GENERAL STATUTES REGARDING HEALTH CARE
3 POWERS OF ATTORNEY, ADVANCE HEALTH CARE DIRECTIVES, AND
4 ADVANCE INSTRUCTIONS FOR MENTAL HEALTH TREATMENT BASED, IN
5 PART, ON PROPOSALS IN THE UNIFORM HEALTH-CARE DECISIONS ACT, AS
6 RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

7 The General Assembly of North Carolina enacts:
8

9 **PART I. FINDINGS**

10 **SECTION 1.** The General Statutes Commission, pursuant to its charge under
11 G.S. 164-13, finds that the adoption of certain proposals in the 2023 Uniform Health-Care
12 Decisions Act would improve the laws of this State. Among these proposals is simplifying
13 execution requirements for health care powers of attorney, advance health care directives ("living
14 wills"), and advance instructions for mental health treatment.

15 The Commission further finds that House Bill 349, 2025 Regular Session, would
16 simplify execution requirements for health care powers of attorney and advance health care
17 directives ("living wills"), two of the three documents for which the General Statutes
18 Commission recommends simplifying execution requirements. In addition to making technical
19 corrections, this act in its entirety provides for all recommendations of the General Statutes
20 Commission resulting from its consideration of the 2023 Uniform Health-Care Decisions Act.
21 Parts II and III of this act would ensure the enactment of all of the Commission's
22 recommendations if House Bill 349 does or does not become law.
23

24 **PART I-A. EXPLAIN THE RELATIONSHIP BETWEEN A HEALTH CARE POWER**
25 **OF ATTORNEY AND OTHER ADVANCE HEALTH CARE PLANNING DOCUMENTS**

26 **SECTION 1A.(a)** G.S. 32A-15 reads as rewritten:

27 **"§ 32A-15. General purpose of this Article.**

28 ...

29 (c) This Article is intended and shall be construed to be consistent with the provisions of
30 Article 23 (Advance Directive For A Natural Death ("Living Will")) of Chapter 90 of the General
31 Statutes provided that in Statutes. In the event of a conflict between the provisions of this Article
32 and Article 23 of Chapter 90, 90 of the General Statutes, the provisions of Article 23 of Chapter
33 90 of the General Statutes control. No conflict between these Chapters exists when either a health
34 care power of attorney or a declaration provides that the declaration is subject to decisions of a
35 health care agent. If no declaration has been executed by the principal as provided in G.S. 90-321
36 that expressly covers the principal's present condition and if the health care agent has been given



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1 the specific authority in a health care power of attorney to authorize the withholding or
 2 discontinuing of life-prolonging measures when the principal is in ~~such-that~~ condition, the
 3 measures may be withheld or discontinued as provided in the health care power of attorney upon
 4 the direction and under the supervision of the attending physician, as G.S. 90-322 ~~shall~~ does not
 5 apply in ~~such-this~~ case. Nothing in this Article ~~shall be construed to authorize~~ authorizes any
 6 affirmative or deliberate act or omission to end life other than to permit the natural process of
 7 dying.

8 (d) This Article is intended and shall be construed to be consistent with ~~the provisions of~~
 9 Part 3A (Revised Uniform Anatomical Gift Act) of Article 16 of Chapter 130A of the General
 10 Statutes. In the event of a conflict between the provisions of this Article and Part 3A of Article
 11 16 of Chapter 130A, the provisions of Part 3A of Article 16 of Chapter 130A of the General
 12 Statutes control."

13 **SECTION 1A.(b)** Article 3 of Chapter 32A of the General Statutes is amended by
 14 adding a new section to read:

15 "**§ 32A-15.1. Combining health care planning documents.**

16 (a) A health care power of attorney may be combined with any other advance health care
 17 planning document, such as:

18 (1) An advance directive for a natural death ("living will") prepared pursuant to
 19 Article 23 of Chapter 90 of the General Statutes.

20 (2) An advance instruction for mental health treatment prepared pursuant to Part
 21 2 of Article 3 of Chapter 122C of the General Statutes.

22 (b) A health care power of attorney that is combined with other advance health care
 23 planning documents shall be clearly titled as combined, and each type of advance health care
 24 planning document within it shall also be individually titled."

25 **SECTION 1A.(c)** G.S. 32A-16(1), (1a), (7), and (8) are recodified as
 26 G.S. 32A-16(1d), (1f), (1), and (4b), respectively.

27 **SECTION 1A.(d)** G.S. 32A-16, as amended by Section 1A(c) of this act, reads as
 28 rewritten:

29 "**§ 32A-16. Definitions.**

30 The following definitions apply in this Article:

31 (1) Advance instruction for mental health treatment or advance instruction. – ~~As~~
 32 ~~defined in G.S. 122C-72(1).~~ Defined in G.S. 122C-72.

33 (1a) Recodified.

34 (1b) Reserved.

35 (1c) Reserved.

36 (1d) Disposition of remains. – The decision to bury or cremate human remains, as
 37 human remains are defined in G.S. 90-210.121, and, subject to
 38 G.S. 32A-19(b), arrangements relating to burial or cremation.

39 (1e) Reserved.

40 (1f) Health care. – Any care, treatment, service, or procedure to maintain,
 41 diagnose, treat, or provide for the principal's physical or mental health or
 42 personal care and ~~comfort~~ comfort, including life-prolonging measures.
 43 "Health care" ~~The term~~ includes mental health treatment as defined in
 44 ~~subdivision (8) of this section.~~

45 (2) Health care agent. – The person appointed as a health care attorney-in-fact.

46 (3) Health care power of attorney. – Except as provided in G.S. 32A-16.1, a
 47 written instrument that substantially meets the requirements of this Article,
 48 that is signed in the presence of two qualified witnesses, and acknowledged
 49 before a notary public, ~~pursuant to which and that appoints~~ appoints an attorney-in-fact
 50 or agent ~~is appointed~~ to act for the principal in matters relating to the health
 51 care of the principal. The notary who takes the acknowledgement may but is

1 not required to be a paid employee of the attending physician or mental health
2 treatment provider, a paid employee of a health facility in which the principal
3 is a patient, or a paid employee of a nursing home or any adult care home in
4 which the principal resides.

5 (4) Life-prolonging measures. – Medical procedures or interventions ~~which that,~~
6 in the judgment of the attending ~~physician-physician,~~ would serve only to
7 postpone artificially the moment of death by sustaining, restoring, or
8 supplanting a vital function, including mechanical ventilation, dialysis,
9 antibiotics, artificial nutrition and hydration, and similar forms of treatment.
10 Life-prolonging measures do not include care necessary to provide comfort or
11 to alleviate pain.

12 (4a) Reserved.

13 (4b) Mental health treatment. – The process of providing for the physical,
14 emotional, psychological, and social needs of the principal for the principal's
15 mental illness. ~~"Mental health treatment"~~ The term includes electroconvulsive
16 treatment, treatment of mental illness with psychotropic medication, and
17 admission to and retention in a facility for care or treatment of mental illness.

18 (4c) Reserved.

19 (4d) Present condition. – The condition of the principal when a physician seeks
20 informed consent to withhold or discontinue life-prolonging measures for the
21 principal.

22 (5) Principal. – The person making the health care power of attorney.

23 (6) Qualified witness. – Except as provided in G.S. 32A-16.1, a witness in whose
24 presence the principal has executed the health care power of attorney, who
25 believes the principal to be of sound mind, and who states that he or she (i) is
26 not related ~~within the third degree to the principal nor to the principal's spouse,~~
27 by blood, marriage, or adoption, (ii) does not know nor have a reasonable
28 expectation that he or she would be entitled to any portion of the estate of the
29 principal upon the principal's death under any existing will or codicil of the
30 principal or under the Intestate Succession ~~Act as it then provides,~~ Act,
31 Chapter 29 of the General Statutes, (iii) is not the attending physician or
32 mental health treatment provider of the principal, ~~nor~~ a licensed health care
33 provider who is a paid employee of the attending physician or mental health
34 treatment provider, ~~nor~~ a paid employee of a health facility in which the
35 principal is a patient, ~~nor~~ or a paid employee of a nursing home or any adult
36 care home in which the principal resides, and (iv) does not have a claim
37 against any portion of the estate of the principal at the time of the principal's
38 execution of the health care power of attorney.

39 (7) Recodified.

40 (8) Recodified."

41 **SECTION 1A.(e)** G.S. 32A-19 reads as rewritten:

42 **"§ 32A-19. Extent of authority; limitations of authority.**

43 ...

44 (a1) ~~A health care power of attorney may incorporate or be combined with an advance~~
45 ~~instruction for mental health treatment prepared pursuant to Part 2 of Article 3 of Chapter 122C~~
46 ~~of the General Statutes.~~ A health care agent's decisions about mental health treatment shall be
47 consistent with any statements the principal has expressed in an advance instruction for mental
48 health treatment under Part 2 of Article 3 of Chapter 122C of the General Statutes, if one so
49 exists, and if none exists, shall be consistent with what the agent believes in good faith to be the
50 manner in which the principal would act if the principal did not lack capacity to make or
51 communicate health care decisions. A health care agent is not subject to criminal prosecution,

1 civil liability, or professional disciplinary action for any action taken in good faith pursuant to an
2 advance instruction for mental health treatment.

3 (b) A health care power of attorney may authorize the health care agent to exercise any
4 and all rights the principal may have with respect to anatomical gifts, the authorization of any
5 autopsy, and the disposition of ~~remains; provided this remains, so long as this~~ authority is limited
6 to incurring reasonable costs related to exercising these ~~powers, and a health care power of~~
7 ~~attorney does not give the health care agent general authority over a principal's property or~~
8 ~~financial affairs, powers.~~

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

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

15 (e) This Article ~~shall not be construed to~~ does not invalidate a power of attorney that
16 authorizes an agent to make health care decisions for the ~~principal, which principal that~~ was
17 executed prior to October 1, 1991.

18"

19 **SECTION 1A.(f)** G.S. 32A-25.1 reads as rewritten:

20 **"§ 32A-25.1. Statutory form health care power of attorney.**

21 (a) The use of the following form in the creation of a health care power of attorney is
22 lawful and, when used, ~~it shall meet~~ meets the requirements of ~~and be construed in accordance~~
23 ~~with the provisions of~~ this Article:

24 **HEALTH CARE POWER OF ATTORNEY**

25 ...

26 ...
27 **1. Designation of Health Care Agent.**

28 I, _____, being of sound mind, hereby appoint the following person(s) to serve
29 as my health care agent(s) to act for me and in my name (in any way I could act in person) to
30 make health care decisions for me as authorized in this document. My designated health care
31 agent(s) shall serve alone, in the order named.

32 ...

33 ...
34 Any successor health care agent designated shall be vested with the same power and duties as if
35 originally named as my health care ~~agent, agent~~ and shall serve any time his or her predecessor
36 is not reasonably available or is unwilling or unable to serve in that capacity.

37 ...
38 **2. Effectiveness of Appointment.**

39 My designation of a health care agent expires only when I revoke it. Absent revocation, the
40 authority granted in this document ~~shall become~~ becomes effective when and if one of the
41 physician(s) listed below determines that I lack capacity to make or communicate decisions
42 relating to my health ~~care, care~~ and will continue in effect during that ~~incapacity, incapacity~~
43 ~~until my death, except death; however, if I authorize my health care agent to exercise my rights~~
44 with respect to anatomical gifts, autopsy, or disposition of my remains, this authority will
45 continue after my death to the extent necessary to exercise that authority.

46 ...

47 ...
48 **4. General Statement of Authority Granted.**

49

1 Subject to any restrictions set forth in Section 5 below, I grant to my health care agent full power
2 and authority to make and carry out all health care decisions for me. These decisions include, but
3 are not limited to:

4
5 A. Requesting, reviewing, and receiving any information, verbal or written,
6 regarding my physical or mental health, including, but not limited to, medical
7 and hospital records, and ~~to consent~~ consenting to the disclosure of this
8 information.

9 ...
10 F. Giving consent for, withdrawing consent for, or withholding consent ~~for~~ for
11 X-ray, anesthesia, medication, surgery, and all other diagnostic and treatment
12 procedures ordered by or under the authorization of a licensed physician,
13 dentist, podiatrist, or other health care provider. This authorization
14 specifically includes the power to consent to measures for relief of pain.

15
16 G. Authorizing the withholding or withdrawal of life-prolonging measures.

17
18 H. Providing my medical information at the request of any individual acting as
19 my attorney-in-fact under a durable power of attorney or as a Trustee or
20 successor Trustee under any Trust Agreement of which I am a Grantor or
21 Trustee, or at the request of any other individual whom my health care agent
22 believes should have ~~such~~ this information. I desire that ~~such~~ this information
23 be provided whenever it would expedite the prompt and proper handling of
24 my affairs or the affairs of any person or entity for which I have some
25 responsibility. In addition, I authorize my health care agent to take any and all
26 legal steps necessary to ensure compliance with my instructions providing
27 access to my protected health information. ~~Such~~ These steps ~~shall~~
28 resorting to any and all legal procedures in and out of courts as may be
29 necessary to enforce my rights under the law and ~~shall include~~ attempting
30 to recover attorneys' fees against anyone ~~who~~ that does not comply with this
31 health care power of attorney.

32 ...
33 J. Taking any lawful actions that may be necessary to carry out these decisions,
34 including, but not limited to: (i) signing, executing, delivering, and
35 acknowledging any agreement, release, authorization, or other document that
36 may be necessary, desirable, convenient, or proper in order to exercise and
37 carry out any of these powers; (ii) granting releases of liability to medical
38 providers or others; and (iii) incurring reasonable costs on my behalf related
39 to exercising these powers, ~~provided that this~~ powers. ~~This~~ health care power
40 of ~~attorney shall not~~ attorney, however, does not give my health care agent
41 general authority over my property or financial affairs.
42

43 **5. Special Provisions and Limitations.**

44 ...

45 _____ B. Limitations Concerning Health Care Decisions. In exercising
46 *(Initial)* the authority to make health care decisions on my behalf, the
47 authority of my health care agent is subject to the following
48 special provisions: (Here you may include any specific
49 provisions you deem appropriate such as: your own definition
50 of when life-prolonging measures should be withheld or
51 discontinued, or instructions to refuse any specific types of

treatment that are inconsistent with your religious ~~beliefs,~~beliefs or are unacceptable to you for any other reason.)

NOTE: DO NOT initial unless you insert a limitation.

8. 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~~is liable to me, my estate, my heirs, successors, assigns, or personal ~~representatives,~~representatives for actions or omissions in reliance on that authority or those representations.
- 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 action taken 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 pursuant to this power of attorney are done with my consent and ~~shall~~ have the same validity and effect as if I were present and exercised the powers ~~myself,~~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 pursuant to this power of attorney ~~shall be~~is superior to and binding upon my family, relatives, friends, and others.

9. Miscellaneous Provisions.

- A. Revocation of Prior Powers of Attorney. I revoke any prior health care power of attorney. The preceding sentence is not intended to revoke any general powers of attorney, some of the provisions of which may relate to health care; however, this power of attorney ~~shall take~~takes precedence over any health care provisions in any valid general power of attorney I have not revoked.
- B. Jurisdiction, Severability, and Durability. This Health Care Power of Attorney is intended to be valid in any jurisdiction in which it is presented. The powers delegated under this power of attorney are ~~severable,~~severable so that the invalidity of one or more powers ~~shall~~does not affect any others. This power of attorney ~~shall~~will not be affected or revoked by my incapacity or mental incompetence.
- ...
- D. No Civil or Criminal Liability. No act or omission of my health care agent, or of any other person, entity, 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, entity, institution, or facility against ~~whom~~which criminal or civil liability is asserted because of conduct authorized by this Health Care Power of Attorney may interpose this document as a defense.

1 E. Reimbursement. My health care agent ~~shall be~~ is entitled to reimbursement
2 for all reasonable expenses incurred as a result of carrying out any provision
3 of this directive.

4 ...
5 I hereby state that the principal, _____, being of sound mind, signed (or directed
6 another to sign on the principal's behalf) the foregoing health care power of attorney in my
7 presence, ~~and that I am not related to the principal by blood or marriage,~~ blood, marriage, or
8 adoption, and I would not be entitled to any portion of the estate of the principal under any
9 existing will or codicil of the principal or as an heir under the Intestate Succession Act, Chapter
10 29 of the General Statutes, if the principal died on this date without a will. I also state that I am
11 not the principal's attending ~~physician, nor physician or mental health treatment provider~~ and that
12 I am not a licensed health care provider or mental health treatment provider who is (1) an
13 employee of the principal's attending physician or mental health treatment provider, (2) an
14 employee of the health facility in which the principal is a patient, or (3) an employee of a nursing
15 home or any adult care home where the principal resides. I further state that I do not have any
16 claim against the principal or the estate of the principal.

17"

18 SECTION 1A.(g) G.S. 32A-26 is repealed.

19
20 **PART I-B. EXPLAIN THE RELATIONSHIP BETWEEN AN ADVANCE DIRECTIVE**
21 **("LIVING WILL") AND OTHER ADVANCE HEALTH CARE PLANNING**
22 **DOCUMENTS; UPDATE THE LIST OF INDIVIDUALS WHO CAN PROVIDE**
23 **CONSENT ON BEHALF OF A PATIENT WHO LACKS CAPACITY AND HAS NO**
24 **LIVING WILL IN PLACE**

25 SECTION 1B.(a) The title of Article 23 of Chapter 90 of the General Statutes reads
26 as rewritten:

27 "Article 23.

28 "~~Right to Natural Death; Brain Death.~~ Advance Directive For A Natural Death ("Living Will")."

29 SECTION 1B.(b) G.S. 90-320 reads as rewritten:

30 "**§ 90-320. General purpose of Article.**

31 (a) The General Assembly recognizes as a matter of public policy that an individual's
32 rights include the right to a peaceful and natural death and that a patient or the patient's
33 representative has the fundamental right to control the decisions relating to the rendering of the
34 patient's own medical care, including the decision to have life-prolonging measures withheld or
35 withdrawn in instances of a terminal condition. ~~This~~ The purpose of this Article is to establish an
36 optional and nonexclusive procedure by which a patient or the patient's representative may
37 exercise these rights. A military advanced medical directive executed in accordance with 10
38 U.S.C. § 1044 or other applicable law is valid in this State.

39 (b) Nothing in this Article ~~shall be construed to authorize~~ authorizes any affirmative or
40 deliberate act or omission to end life other than to permit the natural process of dying. Nothing
41 in this Article ~~shall impair or supersede~~ impairs or supersedes any legal right or legal
42 responsibility ~~which any a~~ person may have to effect the withholding or withdrawal of
43 life-prolonging measures in any lawful manner. ~~In such respect the provisions of this Article are~~
44 enumerative."

45 SECTION 1B.(c) Article 23 of Chapter 90 of the General Statutes is amended by
46 adding a new section to read:

47 "**§ 90-320.1. Combining health care planning documents.**

48 (a) An advance directive under this Article may be combined with any other advance
49 health care planning document, such as:

50 (1) A health care power of attorney prepared pursuant to Article 3 of Chapter 32A
51 of the General Statutes.

(2) An advance instruction for mental health treatment prepared pursuant to Part 2 of Article 3 of Chapter 122C of the General Statutes.

(b) An advance directive for a natural death ("living will") that is combined with other advance health care planning documents shall be clearly titled as combined, and each type of advance health care planning document within it shall also be individually titled."

SECTION 1B.(d) G.S. 90-321 reads as rewritten:

"§ 90-321. Right to a natural death.

(a) The following definitions apply in this Article:

...

(2a) Life-prolonging measures. – As defined in G.S. 32A-16(4). Defined in G.S. 32A-16.

(3) Physician. – Any person licensed to practice medicine under Article 1 of Chapter 90 of the laws of the State of North Carolina-General Statutes.

(3a) Present condition. – The condition of the principal when a physician seeks informed consent to withhold or discontinue life-prolonging measures for the principal.

(4) Repealed by Session Laws 2007-502, s. 11(a), effective October 1, 2007.

(b) If a person has expressed through a declaration, in accordance with subsection (c) of this section, a desire that the person's life not be prolonged by life-prolonging measures, and the declaration has not been revoked in accordance with subsection (e) of this ~~section; and~~section, ~~then the life-prolonging measures identified by the declarant shall or may, as specified by the declarant, be withheld or discontinued at the direction and under the supervision of the attending physician when both of the following apply:~~

(1) It is determined by the attending physician that the declarant's present condition is a condition described in subsection (c) of this section and specified in the declaration for applying the declarant's ~~directives,~~ and directives.

(2) There is confirmation of the declarant's present condition as set out in subdivision (b)(1) of this section by a physician other than the attending ~~physician;~~physician.

~~then the life-prolonging measures identified by the declarant shall or may, as specified by the declarant, be withheld or discontinued upon the direction and under the supervision of the attending physician.~~

(c) The attending physician shall follow, subject to subsections (b), (e), and (k) of this section, a ~~declaration;~~declaration to which all of the following apply:

(1) ~~That It~~ It expresses a desire of the declarant that life-prolonging measures not be used to prolong the declarant's life ~~if, as specified in the declaration as to any or all in the event of one or more of the following:~~

- a. The declarant has an incurable or irreversible condition that will result in the declarant's death within a relatively short period of ~~time; or~~time.
- b. The declarant becomes unconscious and, to a high degree of medical certainty, will never regain ~~consciousness; or~~consciousness.

...

(2) ~~That It~~ It states that the declarant is aware that the declaration authorizes a physician to withhold or discontinue the life-prolonging ~~measures;~~ and measures.

(3) Except as provided in G.S. 90-321.1, ~~that it~~ it has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are not related ~~within the third degree~~ to the declarant ~~or to the declarant's spouse, by blood, marriage, or adoption,~~ (ii) do not know or have a reasonable expectation that they would be entitled to any

portion of the estate of the declarant upon the declarant's death under any will of the declarant or codicil ~~thereto to any will~~ then existing or under the Intestate Succession ~~Act as it then provides, Act, Chapter 29 of the General Statutes,~~ (iii) are not the attending physician, licensed health care providers who are paid employees of the attending physician, paid employees of a health facility in which the declarant is a patient, or paid employees of a nursing home or any adult care home in which the declarant resides, and (iv) do not have a claim against any portion of the estate of the declarant at the time of the ~~declaration; and~~ declaration.

(4) ~~That~~ It has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out in subsection (d1) of this section. A notary who takes the acknowledgement may but is not required to be a paid employee of the attending physician, a paid employee of a health facility in which the declarant is a patient, or a paid employee of a nursing home or any adult care home in which the declarant resides.

(d) Repealed by Session Laws 2007-502, s. 11(b), effective October 1, 2007.

(d1) The following form is ~~specifically determined to meet~~ meets the requirements of subsection (c) of this section:

ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")

...
*If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses and proved by a notary public. Follow the instructions about which choices you can initial very carefully. **Do not sign this form until** two witnesses and a notary public are present to watch you sign it. You then should consider giving a copy to your primary physician ~~and/or~~ and a trusted relative, and should consider filing it with the Advanced Health Care Directive Registry maintained by the North Carolina Secretary of State: <http://www.nclifelinks.org/ahcdr/>*

...
1. When My Directives Apply

...
_____ I suffer from advanced dementia or any other condition
(Initial) ~~which that~~ results in the substantial loss of my cognitive ability and my health care providers determine that, to a high degree of medical certainty, this loss is not reversible.

...
7. My Health Care Providers May Rely on this Directive

My health care providers ~~shall~~ are not be liable to me or to my family, my estate, my heirs, or my personal representative for following the instructions I give in this instrument. Following my directions shall not be considered suicide, ~~or~~ the cause of my death, or malpractice or unprofessional conduct. If I have revoked this instrument but my health care providers do not know that I have done so, and they follow the instructions in this instrument in good faith, they ~~shall~~ be are entitled to the same protections to which they would have been entitled if the instrument had not been revoked.

8. I Want this Directive to be Effective Anywhere

I intend that this Advance Directive be followed by any health care provider in any place.

...

1 I hereby state that the declarant, _____, being of sound mind, signed (or
 2 directed another to sign on declarant's behalf) the foregoing Advance Directive for a Natural
 3 Death in my presence, ~~and~~ that I am not related to the declarant by ~~blood or marriage, blood,~~
 4 marriage, or adoption, and I would not be entitled to any portion of the estate of the declarant
 5 under any existing will or codicil of the declarant or as an heir under the Intestate Succession
 6 Act, Chapter 29 of the General Statutes, if the declarant died on this date without a will. I also
 7 state that I am not the declarant's attending ~~physician, nor physician~~ or a licensed health care
 8 provider who is (1) an employee of the declarant's attending physician, (2) ~~nor~~ an employee of
 9 the health facility in which the declarant is a patient, or (3) an employee of a nursing home or
 10 any adult care home where the declarant resides. I further state that I do not have any claim
 11 against the declarant or the estate of the declarant.

12 ...

13 (e) A declaration may be revoked by the declarant, in writing or in any manner by which
 14 the declarant is able to communicate the declarant's intent to revoke in a clear and consistent
 15 manner, without regard to the declarant's mental or physical condition. A health care provider
 16 ~~shall have~~ has no liability for acting in accordance with a revoked declaration unless the provider
 17 has actual notice of the revocation. A health care agent ~~may not~~ is not authorized to revoke a
 18 declaration unless the health care power of attorney explicitly authorizes that revocation;
 19 however, a health care agent may exercise any authority explicitly given to the health care agent
 20 in a declaration. A guardian of the person of the declarant or general guardian ~~may not~~ is not
 21 authorized to revoke a declaration.

22 (f) The execution and consummation of declarations made in accordance with subsection
 23 (c) ~~shall of this section does not for any purpose constitute suicide for any purpose.~~ suicide.

24 (g) No person shall be required to sign a declaration in accordance with subsection (c) of
 25 this section as a condition for becoming insured under any insurance contract or for receiving
 26 any medical treatment.

27 (h) The withholding or discontinuance of life prolonging measures in accordance with
 28 this section shall not be considered the cause of death for any civil or criminal purposes nor shall
 29 it be considered unprofessional conduct or a lack of professional competence. Any person,
 30 ~~institution or institution, or facility against whom which~~ criminal or civil liability is asserted
 31 because of conduct in compliance with this section may interpose this section as a defense. The
 32 protections of this section extend to any valid declaration, including a document valid under
 33 subsection (l) of this ~~section; these section.~~ These protections are not limited to declarations
 34 prepared in accordance with the statutory form provided in subsection (d1) of this ~~section; section~~
 35 or to declarations filed with the Advance Health Care Directive Registry maintained by the
 36 Secretary of State. A health care provider may rely in good faith on an oral or written statement
 37 by legal counsel that a document appears to meet the statutory requirements for a declaration.

38 ...

39 (j) ~~The form provided by this section may be combined with or incorporated into a health~~
 40 ~~care power of attorney form meeting the requirements of Article 3 of Chapter 32A of the General~~
 41 ~~Statutes; provided, however, that the resulting form shall be signed, witnessed, and proved in~~
 42 ~~accordance with the provisions of this section.~~

43 (k) Notwithstanding subsection (c) of this ~~section; section,~~ the following apply:

- 44 (1) An attending physician may decline to honor a declaration that expresses a
 45 desire of the declarant that life-prolonging measures not be used if doing so
 46 would violate that physician's conscience or the conscience-based policy of
 47 the facility at which the declarant is being ~~treated; provided, an~~ treated. An
 48 attending physician who declines to honor a declaration on these grounds ~~must~~
 49 shall not interfere; interfere and ~~must~~ shall reasonably cooperate ~~reasonably,~~
 50 with efforts to either substitute an attending physician whose conscience
 51 would not be violated by honoring the ~~declaration; declaration~~ or transfer the

1 declarant to a facility that does not have policies in force that prohibit honoring
2 the declaration.

- 3 (2) An attending physician may decline to honor a declaration ~~if-if,~~ after
4 reasonable ~~inquiry-inquiry,~~ there are reasonable grounds to question the
5 genuineness or validity of a declaration. ~~The subsection-This subdivision~~
6 imposes no duty on the attending physician to verify a declaration's
7 genuineness or validity.

8 (l) Notwithstanding subsection (c) of this section, a declaration or similar document
9 executed in a jurisdiction other than North Carolina ~~shall be-is~~ valid in this State if it appears to
10 have been executed in accordance with the applicable requirements of that jurisdiction or this
11 State."

12 SECTION 1B.(e) G.S. 90-322 reads as rewritten:

13 "§ 90-322. Procedures for natural death in the absence of a declaration.

14 (a) If the attending physician ~~determines,~~ determines to a high degree of medical
15 ~~certainty,~~ certainty that a person lacks capacity to make or communicate health care decisions
16 and the person will never regain that capacity, ~~and then life-prolonging measures may be~~
17 withheld or discontinued in accordance with subsection (b) of this section when all of the
18 following apply:

- 19 (1) Repealed by Session Laws 2007-502, s. 12, effective October 1, 2007.

20 (1a) ~~That the person:~~

21 a. ~~Has-Either the person has an incurable or irreversible condition that~~
22 ~~will result in the person's death within a relatively short period of time;~~
23 ~~or~~

24 b. ~~Is-time or the person is unconscious and, to a high degree of medical~~
25 ~~certainty, will never regain consciousness; and consciousness.~~

- 26 (2) There is confirmation of the person's present condition as set out ~~above in this~~
27 subdivisions (1a) and (3) of this subsection, in writing by a physician other
28 than the attending physician; and physician.

- 29 (3) A vital bodily function of the person could be restored or is being sustained
30 by ~~life-prolonging measures; measures.~~

- 31 (4) Repealed by Session Laws 2007-502, s. 12, effective October 1, 2007.

32 ~~then, life-prolonging measures may be withheld or discontinued in accordance with subsection~~
33 ~~(b) of this section.~~

34 (b) If a ~~person's-patient's~~ condition has been determined to meet the conditions set forth
35 in subsection (a) of this section and no instrument has been executed as provided in G.S. 90-321,
36 then life-prolonging measures may be withheld or discontinued upon the direction and under the
37 supervision of the attending physician with the concurrence of the following persons, with
38 priority in the order indicated:

- 39 (1) A guardian of the patient's person, or a general guardian with powers over the
40 patient's person, appointed by a court of competent jurisdiction pursuant to
41 Article 5 of Chapter 35A of the General Statutes; ~~provided that, if Statutes.~~
42 However, if the patient has a health care agent appointed pursuant to a valid
43 health care power of attorney, the health care agent ~~shall have~~ has the right to
44 exercise the authority to the extent granted in the health care power of attorney
45 and to the extent provided in G.S. 32A-19(b)-G.S. 32A-19(a), unless the Clerk
46 clerk of superior court has suspended the authority of that health care agent in
47 accordance with G.S. 35A-1208(a).

- 48 (2) A health care agent appointed pursuant to a valid health care power of
49 attorney, to the extent of the authority granted.

- 50 (3) An agent, with powers to make health care decisions for the patient, appointed
51 by the patient, to the extent of the authority granted.

- 1 (4) The patient's spouse.
- 2 (5) A majority of the patient's reasonably available parents and children who are
- 3 at least 18 years of age.
- 4 (5a) An individual who has an established relationship with the patient, who is
- 5 acting in good faith on behalf of the patient, who can reliably convey the
- 6 patient's wishes, and who has been living with the patient for at least one year.
- 7 (6) A majority of the patient's reasonably available siblings who are at least 18
- 8 years of age.
- 9 (6a) A majority of the patient's reasonably available grandparents or grandchildren
- 10 who are at least 18 years of age.
- 11 (6b) An individual not listed in this subsection who is acting in good faith on behalf
- 12 of the patient and who has assisted the patient with supported decision making
- 13 routinely during the preceding six months. As used in this subdivision,
- 14 "supported decision making" means assistance that is provided by one or more
- 15 individuals of the patient's choosing and that helps the patient make or
- 16 communicate a decision, including by helping the patient understand the
- 17 nature and consequences of the decision.
- 18 (6c) A majority of the patient's reasonably available stepchildren who are at least
- 19 18 years of age, whom the patient actively parented during their minor years,
- 20 and with whom the patient has an ongoing relationship.
- 21 (7) An individual not otherwise listed in this subsection who has an established
- 22 relationship with the patient, who is acting in good faith on behalf of the
- 23 patient, and who can reliably convey the patient's wishes.

24 If none of the above is reasonably ~~available then~~ available, then, at the discretion of the
 25 attending ~~physician~~ physician, the life-prolonging measures may be withheld or discontinued
 26 upon the direction and under the supervision of the attending physician.

27 (c) Repealed by Session Laws 1979, c. 715, s. 2.

28 (c1) In order to establish the authority of a person listed in subsection (b) of this section,
 29 the attending physician may request and rely upon a statement from the person affirming the
 30 person's status under subsection (b) of this section. A physician may accept the concurrence of a
 31 person having lower priority under subsection (b) of this section only if a person having higher
 32 priority is not reasonably available.

33 (d) The withholding or discontinuance of ~~such~~ life-prolonging measures pursuant to this
 34 section shall not be considered the cause of death for any civil or criminal purpose nor shall it be
 35 considered unprofessional conduct. Any person, institution or facility against whom ~~whom~~ which
 36 criminal or civil liability is asserted because of conduct in compliance with this section may
 37 interpose this section as a defense."

38
 39 **PART I-C. SIMPLIFY EXECUTION REQUIREMENTS FOR AN ADVANCE**
 40 **INSTRUCTION FOR MENTAL HEALTH TREATMENT AND EXPLAIN ITS**
 41 **RELATIONSHIP TO OTHER ADVANCE HEALTH CARE PLANNING DOCUMENTS**

42 **SECTION 1C.(a)** G.S. 122C-71 reads as rewritten:

43 **"§ 122C-71. Purpose.**

44 ...

45 (c) This Part is intended and shall be construed to be consistent with ~~the provisions of~~
 46 Article 3 (Health Care Powers of Attorney) of Chapter 32A of the General Statutes, ~~provided that~~
 47 ~~in~~ Statutes. In the event of a conflict between the provisions of this Part and Article 3 of Chapter
 48 32A, 32A of the General Statutes, the provisions of this Part control."

49 **SECTION 1C.(b)** Part 2 of Article 3 of Chapter 122C of the General Statutes is
 50 amended by adding a new section to read:

51 **"§ 122C-71.1. Combining advance planning documents.**

1 (a) An advance instruction for mental health treatment may be combined with a general
 2 power of attorney prepared pursuant to Chapter 32C of the General Statutes or any other advance
 3 health care planning document, such as:

4 (1) A health care power of attorney prepared pursuant to Article 3 of Chapter 32A
 5 of the General Statutes.

6 (2) An advance directive for a natural death ("living will") prepared pursuant to
 7 Article 23 of Chapter 90 of the General Statutes.

8 (b) An advance instruction for mental health treatment that is combined with other
 9 advance health care planning documents shall be clearly titled as combined, and each type of
 10 advance health care planning document within it shall also be individually titled."

11 **SECTION 1C.(c)** G.S. 122C-72 reads as rewritten:

12 **"§ 122C-72. Definitions.**

13 As used in this Part, unless the context clearly requires otherwise, the following terms have
 14 the meanings specified:

15 (1) ~~"Advance instruction for mental health treatment" or "advance instruction"~~
 16 ~~means a~~ Advance instruction for mental health treatment or advance
 17 instruction. – A written instrument, instrument that is either signed in the
 18 presence of two qualified witnesses who believe the principal to be of sound
 19 mind at the time of the signing, and signing or acknowledged before a notary
 20 public, pursuant to which the principal makes a declaration of instructions,
 21 information, and preferences regarding the principal's mental health treatment
 22 and states that the principal is aware that the advance instruction authorizes a
 23 mental health treatment provider to act according to the instruction. It may
 24 also state the principal's instructions regarding, but not limited to, consent to
 25 or refusal of mental health treatment when the principal is incapable.

26 (2) ~~"Attending physician" means the~~ Attending physician. – The physician who
 27 has primary responsibility for the care and treatment of the principal.

28 (3) Repealed by Session Laws 1998-198, s. 2.

29 (4) ~~"Incapable" means that, in~~ Incapable. – In the opinion of a physician or
 30 eligible psychologist, the ~~person currently~~ person, at the time a mental health
 31 treatment decision is being made, lacks sufficient understanding or capacity
 32 to make and communicate mental health treatment decisions. As used in this
 33 Part, the term "eligible psychologist" has the meaning given in
 34 G.S. 122C-3(13d).

35 (5) ~~"Mental health treatment" means the~~ Mental health treatment. – The process
 36 of providing for the physical, emotional, psychological, and social needs of
 37 the principal for the principal's mental illness. "Mental health treatment" The
 38 term includes, but is not limited to, electroconvulsive treatment (ECT),
 39 commonly referred to as "shock ~~treatment~~", ~~treatment~~, treatment of mental
 40 illness with psychotropic medication, and admission to and retention in a
 41 facility for care or treatment of mental illness.

42 (6) ~~"Principal" means the~~ Principal. – The person making the advance instruction.

43 (7) ~~"Qualified witness" means a~~ Qualified witness. – A witness who affirms that
 44 the principal is personally known to the witness, that the principal signed or
 45 acknowledged the principal's signature on the advance instruction in the
 46 presence of the witness, that the witness believes the principal to be of sound
 47 mind and not to be under duress, fraud, or undue influence, and that the
 48 witness is ~~not~~ not any of the following:

49 a. ~~The attending physician or physician, mental health service provider~~
 50 ~~provider, or an employee of the physician or mental health treatment~~
 51 ~~provider; service provider.~~

- b. An owner, operator, or an employee of an owner or operator of a health care facility in which the principal is a patient or ~~resident; or resident.~~
- c. Related ~~within the third degree~~ to the principal ~~or to the principal's spouse~~ by blood, marriage, or adoption.
- d. A person appointed as an attorney-in-fact by this document."

SECTION 1C.(d) G.S. 122C-73 reads as rewritten:

"§ 122C-73. Scope, use, and authority of advance instruction for mental health treatment.

(d) A principal may nominate, by advance instruction for mental health treatment, the guardian of the person of the principal if a guardianship proceeding is ~~thereafter commenced.~~ commenced following the execution of the advance instruction for mental health treatment. The court shall make its appointment in accordance with the principal's most recent nomination in an unrevoked advance instruction for mental health treatment, except for good cause shown.

(f) ~~An advance instruction for mental health treatment may be combined with a health care power of attorney or general power of attorney that is executed in accordance with the requirements of Chapter 32A or Chapter 32C of the General Statutes so long as each form shall be executed in accordance with its own statute."~~

SECTION 1C.(e) G.S. 122C-77 reads as rewritten:

"§ 122C-77. Statutory form for advance instruction for mental health treatment.

(a) ~~This Part shall not be construed to invalidate an advance instruction for mental health treatment that was executed and was otherwise valid.~~ Use of the statutory form prescribed in this section is an optional and nonexclusive method for creating an advance instruction for mental health treatment and does not affect the use or validity of other forms of advance instruction for mental health treatment, including previous statutory forms.

(b) The use of the following or similar form ~~after the effective date of this Part~~ in the creation of an advance instruction for mental health treatment is lawful, and, when used, it shall specifically meet the requirements and be construed in accordance with ~~the provisions of this Part.~~

PSYCHOACTIVE PSYCHOTROPIC MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my instructions regarding ~~psychoactive psychotropic~~ medications are as follows: (Place initials beside choice.)

SIGNATURE OF PRINCIPAL

Note: Do not sign this form until two witnesses or a notary public are present to watch you sign it. You then should consider giving a copy to your primary physician, mental health provider, and a trusted relative and should consider filing it with the Advance Health Care Directive Registry maintained by the North Carolina Secretary of State.

Box #1

If you elect to have your advance instruction witnessed, have the following section completed by two qualified witnesses:

NATURE AFFIRMATION OF WITNESSES

I hereby ~~state~~ affirm that the principal is personally known to me, that the principal signed or acknowledged the principal's signature on this advance instruction for mental health treatment in my presence, that the principal appears to be of sound mind and not under duress, fraud, or undue influence, and that I am ~~not~~ not any of the following:

- a. ~~The attending physician or~~ physician, mental health service ~~provider~~ provider, or an employee of the physician or mental health ~~treatment provider;~~ service provider.
- b. An owner, operator, or an employee of an owner or operator of a health care facility in which the principal is a patient or ~~resident;~~ resident.
- c. Related ~~within the third degree to the principal or to the principal's spouse.~~ by blood, marriage, or adoption.
- d. A person appointed as an attorney-in-fact by this document.

AFFIRMATION OF WITNESSES

~~We affirm that the principal is personally known to us, that the principal signed or acknowledged the principal's signature on this advance instruction for mental health treatment in our presence, that the principal appears to be of sound mind and not under duress, fraud, or undue influence, and that neither of us is:~~

- ~~A person appointed as an attorney in fact by this document;~~
- ~~The principal's attending physician or mental health service provider or a relative of the physician or provider;~~
- ~~The owner, operator, or relative of an owner or operator of a facility in which the principal is a patient or resident; or~~
- ~~A person related to the principal by blood, marriage, or adoption.~~

Witnessed by:

Witness: _____ *(Signature of witness)*

_____ *(type/print name of witness)*

Date: _____

Witness: _____ *(Signature of witness)*

_____ *(type/print name of witness)*

Date: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

Box #2

If you elect to have your advance instruction notarized, have the following section completed by a qualified notary public:

CERTIFICATION OF NOTARY PUBLIC

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public for the County cited above in the State of North Carolina, hereby certify that _____ appeared before me and swore or affirmed to me and to the witnesses in my presence that this instrument is an advance instruction for mental health treatment, and that he/she willingly and voluntarily made and executed it as his/her free act and deed for the purposes expressed in it.

I further certify that _____ and _____, witnesses, appeared before me and swore or affirmed that they witnessed _____ sign the attached advance instruction for mental health treatment, believing him/her to be of sound mind; and also swore that at the time they witnessed the signing they were not (i) the attending physician or mental health treatment provider or an employee of the physician or mental health treatment provider and (ii) they were not an owner, operator, or employee of an owner or operator of a health care facility in which the principal is a patient or resident, and (iii) they were not related within the third degree to the principal or to the principal's spouse. I further certify that I am satisfied as to the genuineness and due execution of the instrument.

This is the _____ day of _____, _____

Notary Public

My Commission expires:

_____ COUNTY, _____ STATE

Sworn to (or affirmed) and subscribed before me this day by

(type/print name of principal)

Date: _____
(Official Seal)

Signature of Notary Public

_____, Notary Public
Printed or typed name

My commission expires: _____

NOTICE TO PERSON MAKING AN INSTRUCTION FOR MENTAL HEALTH TREATMENT

This is an important legal document. It creates an instruction for mental health treatment. Before signing this document you should know these important facts:

This document allows you to make decisions in advance about certain types of mental health treatment. The instructions you include in this declaration will be followed if a physician or eligible psychologist determines that you are incapable of making and communicating treatment decisions. Otherwise you will be considered capable to give or withhold consent for the treatments. Your instructions may be overridden if you are being held in accordance with civil commitment law. Under ~~the Health Care Power of Attorney~~ a health care power of attorney you may also appoint a person as your health care agent to make treatment decisions for you if you become incapable. You have the right to revoke this document at any time you have not been determined to be incapable. YOU MAY NOT REVOKE THIS ADVANCE INSTRUCTION WHEN YOU ARE FOUND INCAPABLE BY A PHYSICIAN OR OTHER AUTHORIZED MENTAL HEALTH TREATMENT PROVIDER. A revocation is effective when it is communicated to your attending physician or other provider. ~~The physician or other provider shall note the revocation in your medical record.~~ To be valid, this advance instruction must be signed by two qualified witnesses, personally known to you, witnesses who are present when you

1 sign or acknowledge your signature. ~~It signature, or it must also be acknowledged before a notary~~
2 public.

3 NOTICE TO PHYSICIAN OR OTHER MENTAL HEALTH TREATMENT PROVIDER

4 Under North Carolina law, a person may use this advance instruction to provide consent for
5 future mental health treatment if the person later becomes incapable of making those decisions.
6 Under ~~the Health Care Power of Attorney~~ a health care power of attorney the person may also
7 appoint a health care agent to make mental health treatment decisions for the person when
8 incapable. A person is "incapable" when in the opinion of a physician or eligible psychologist
9 the ~~person currently~~ person, at the time a mental health treatment decision is being made, lacks
10 sufficient understanding or capacity to make and communicate mental health treatment decisions.
11 This document becomes effective upon its proper execution and remains valid unless revoked.
12 Upon being presented with this advance instruction, the physician or other provider must make
13 it a part of the person's medical record. Upon communication that it is revoked, the physician or
14 other provider must note the revocation in the person's medical record. The attending physician
15 or other mental health treatment provider must act in accordance with the statements expressed
16 in the advance instruction when the person is determined to be incapable, unless compliance is
17 not consistent with G.S. 122C-74(g). The physician or other mental health treatment provider
18 shall promptly notify the principal and, if applicable, the health care agent, and document
19 noncompliance with any part of an advance instruction in the principal's medical record. The
20 physician or other mental health treatment provider may rely upon the authority of a signed,
21 witnessed, dated, and notarized advance instruction, as provided in G.S. 122C-75."
22

23 PART I-D. ADDITIONAL CONFORMING CHANGES

24 SECTION 1D.(a) G.S. 90-21.13 reads as rewritten:

25 "§ 90-21.13. Informed consent to health care treatment or procedure.

26 (a) No recovery ~~shall be~~ is allowed against any health care provider ~~upon on the grounds~~
27 ground that the health care treatment was rendered without the informed consent of the patient
28 or ~~other another~~ person authorized to give consent for the patient where when either of the
29 following applies:

30 (1) Both of the following:

31 a. The action of the health care provider in obtaining the consent of the
32 patient or ~~other another~~ person authorized to give consent for the
33 patient was in accordance with the standards of practice among
34 members of the same health care profession with similar training and
35 experience situated in the same or similar ~~communities;~~
36 and communities.

37 (2)b. A reasonable person, from the information provided by the health care
38 provider under the circumstances, would have a general understanding
39 of the procedures or treatments and of the usual and most frequent
40 risks and hazards inherent in the proposed procedures or ~~treatments~~
41 which treatments, and these procedures or treatments are recognized
42 and followed by other health care providers engaged in the same field
43 of practice in the same or similar communities; or communities.

44 (3)(2) A reasonable person, under all the surrounding circumstances, would have
45 undergone ~~such the~~ treatment or procedure had he the person been advised by
46 the health care provider in accordance with ~~the provisions of subdivisions (1)~~
47 and (2) subdivision (1) of this subsection.

48 (b) A consent ~~which that~~ is evidenced in writing and which writing, meets the ~~foregoing~~
49 standards, standards of subsection (a) of this section, and which is signed by the patient who has
50 capacity to make and communicate health care decisions or other another authorized person, shall
51 be person is presumed to be a valid consent. This presumption, however, may be presumption is

1 subject to rebuttal only upon proof that ~~such the~~ consent was obtained by fraud, ~~deception~~
2 ~~deception~~, or misrepresentation of a material fact. ~~A consent that meets the foregoing standards,~~
3 ~~that is given by a patient, or other authorized person, who under all the surrounding circumstances~~
4 ~~has capacity to make and communicate health care decisions, is a valid consent.~~

5 (c) The following persons, with priority in the order indicated, are authorized to consent
6 to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make
7 or communicate health care decisions:

8 (1) A guardian of the patient's person, or a general guardian with powers over the
9 patient's person, appointed by a court of competent jurisdiction pursuant to
10 Article 5 of Chapter 35A of the General ~~Statutes; provided that, Statutes.~~
11 However, if the patient has a health care agent appointed pursuant to a valid
12 health care power of attorney, the health care agent shall have has the right to
13 exercise the authority to the extent granted in the health care power of attorney
14 and to the extent provided in G.S. 32A-19(a) unless the ~~Clerk~~ clerk of superior
15 court has suspended the authority of that health care agent in accordance with
16 G.S. 35A-1208(a).

17 (2) A health care agent appointed pursuant to a valid health care power of
18 attorney, to the extent of the authority granted.

19 (3) An agent, with powers to make health care decisions for the patient, appointed
20 by the patient, to the extent of the authority granted.

21 (4) The patient's spouse.

22 (5) A majority of the patient's reasonably available parents and children who are
23 at least 18 years of age.

24 (5a) An individual who has an established relationship with the patient, who is
25 acting in good faith on behalf of the patient, who can reliably convey the
26 patient's wishes, and who has been living with the patient for at least one year.

27 (6) A majority of the patient's reasonably available siblings who are at least 18
28 years of age.

29 (6a) A majority of the patient's reasonably available grandparents or grandchildren
30 who are at least 18 years of age.

31 (6b) An individual not listed in this subsection who is acting in good faith on behalf
32 of the patient and who has assisted the patient with supported decision making
33 routinely during the preceding six months. As used in this subdivision,
34 "supported decision making" means assistance that is provided by one or more
35 individuals of the patient's choosing and that helps the patient make or
36 communicate a decision, including by helping the patient understand the
37 nature and consequences of the decision.

38 (6c) A majority of the patient's reasonably available stepchildren who are at least
39 18 years of age, whom the patient actively parented during their minor years,
40 and with whom the patient has an ongoing relationship.

41 (7) An individual not otherwise listed in this subsection who has an established
42 relationship with the patient, who is acting in good faith on behalf of the
43 patient, and who can reliably convey the patient's wishes.

44 (c1) If none of the persons listed under subsection (c) of this section is reasonably
45 available, then the patient's attending physician, in the attending physician's discretion, may
46 provide health care treatment without the consent of the patient or other person authorized to
47 consent for the patient if there is confirmation by a physician other than the patient's attending
48 physician of the patient's condition and the necessity for ~~treatment; provided, however, treatment.~~
49 However, that confirmation of the patient's condition and the necessity for treatment are not
50 required if the delay in obtaining the confirmation would endanger the life or seriously worsen
51 the condition of the patient.

1 (c2) In order to establish the authority of a person listed in subsection (c) of this section,
 2 the attending physician may request and rely upon a statement from the person affirming the
 3 person's status under subsection (c) of this section. A physician may accept the consent of a
 4 person having lower priority under subsection (c) of this section only if a person having higher
 5 priority is not reasonably available.

6 (d) No action ~~may shall~~ be maintained against any health care provider ~~upon any based~~
 7 ~~on a guarantee, warranty-warranty,~~ or assurance as to the result of any medical, ~~surgical-surgical,~~
 8 or diagnostic procedure or treatment unless the guarantee, ~~warranty-warranty,~~ or assurance, or
 9 some note or memorandum ~~thereof, shall be of it, is~~ in writing and signed by the provider or by
 10 ~~some other another~~ person authorized to act for or on behalf of ~~such the~~ provider.

11 (e) In the event of ~~any a~~ conflict between the provisions of this section and those of
 12 G.S. 35A-1245, ~~90-21.17, and 90-322, G.S. 90-21.17,~~ Articles 1A and 19 of Chapter ~~90, 90~~ of
 13 ~~the General Statutes, G.S. 90-322,~~ and Article 3 of Chapter 122C of the General Statutes, the
 14 provisions of those sections and Articles ~~shall control and continue in full force and~~
 15 ~~effect, control."~~

16 SECTION 1D.(b) G.S. 130A-466(b) is repealed.

17
 18 **PART II. SIMPLIFY EXECUTION REQUIREMENTS FOR A HEALTH CARE POWER**
 19 **OF ATTORNEY AND AN ADVANCE DIRECTIVE ("LIVING WILL")**

20 SECTION 2.1.(a) G.S. 32A-16(3), as amended by Section 1A(d) of this act, reads
 21 as rewritten:

22 "(3) Health care power of attorney. – Except as provided in G.S. 32A-16.1, a
 23 written instrument that substantially meets the requirements of this Article,
 24 that is signed in the presence of two qualified ~~witnesses, and witnesses~~ or
 25 acknowledged before a notary public, and that appoints an attorney-in-fact or
 26 agent to act for the principal in matters relating to the health care of the
 27 principal. The notary who takes the acknowledgement may but is not required
 28 to be a paid employee of the attending physician or mental health treatment
 29 provider, a paid employee of a health facility in which the principal is a
 30 patient, or a paid employee of a nursing home or any adult care home in which
 31 the principal resides."

32 SECTION 2.1.(b) G.S. 32A-25.1(a), as amended by Section 1A(f) of this act, reads
 33 as rewritten:

34 "(a) The use of the following form in the creation of a health care power of attorney is
 35 lawful and, when used, meets the requirements of and be construed in accordance with the
 36 provisions of this Article:

37
 38 **HEALTH CARE POWER OF ATTORNEY**

39
 40 **NOTE: YOU SHOULD USE THIS DOCUMENT TO NAME A PERSON AS YOUR**
 41 **HEALTH CARE AGENT IF YOU ARE COMFORTABLE GIVING THAT PERSON**
 42 **BROAD AND SWEEPING POWERS TO MAKE HEALTH CARE DECISIONS FOR**
 43 **YOU. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A**
 44 **HEALTH CARE POWER OF ATTORNEY.**

45
 46 ***EXPLANATION:** You have the right to name someone to make health care decisions for you*
 47 *when you cannot make or communicate those decisions. This form may be used to create a health*
 48 *care power of attorney, and meets the requirements of North Carolina law. However, you are*
 49 *not required to use this form, and North Carolina law allows the use of other forms that meet*
 50 *certain requirements. If you prepare your own health care power of attorney, you should be very*
 51 *careful to make sure it is consistent with North Carolina law.*

1
2 *This document gives the person you designate as your health care agent **broad powers** to make*
3 *health care decisions for you when you cannot make the decision yourself or cannot communicate*
4 *your decision to other people. You should discuss your wishes concerning life-prolonging*
5 *measures, mental health treatment, and other health care decisions with your health care agent.*
6 *Except to the extent that you express specific limitations or restrictions in this form, your health*
7 *care agent may make any health care decision you could make yourself.*

8
9 *This form does not impose a duty on your health care agent to exercise granted powers, but when*
10 *a power is exercised, your health care agent will be obligated to use due care to act in your best*
11 *interests and in accordance with this document.*

12
13 *This Health Care Power of Attorney form is intended to be valid in any jurisdiction in which it*
14 *is presented, but places outside North Carolina may impose requirements that this form does not*
15 *meet.*

16
17 *If you want to use this form, you must complete it, sign it, and have your signature witnessed by*
18 *two qualified witnesses ~~and~~ or proved by a notary public. Follow the instructions about which*
19 *choices you can initial very carefully. **Do not sign this form until** two witnesses ~~and~~ or a notary*
20 *public are present to watch you sign it. You then should give a copy to your health care agent*
21 *and to any alternates you name. You should consider filing it with the Advance Health Care*
22 *Directive Registry maintained by the North Carolina Secretary of State:*
23 [http://www.nclifelinks.org/ahedr/State.](http://www.nclifelinks.org/ahedr/State)

24 ...
25 By signing here, I indicate that I am mentally alert and competent, fully informed as to the
26 contents of this document, and understand the full import of this grant of powers to my health
27 care agent.

28
29 This the ____ day of _____, 20 ____.

30
31 _____ (SEAL)(SIGNATURE)
32

33 I hereby state that the principal, _____, being of sound mind, signed (or directed
34 another to sign on the principal's behalf) the foregoing health care power of attorney in my
35 presence, that I am not related to the principal by blood, marriage, or adoption, and I would not
36 be entitled to any portion of the estate of the principal under any existing will or codicil of the
37 principal or as an heir under the Intestate Succession Act, Chapter 29 of the General Statutes, if
38 the principal died on this date without a will. I also state that I am not the principal's attending
39 physician or mental health treatment provider and that I am not a licensed health care provider
40 or mental health treatment provider who is (1) an employee of the principal's attending physician
41 or mental health treatment provider, (2) an employee of the health facility in which the principal
42 is a patient, or (3) an employee of a nursing home or any adult care home where the principal
43 resides. I further state that I do not have any claim against the principal or the estate of the
44 principal.

45
46 Box #1

47 If you elect to have your declaration witnessed, complete the following section:

48
49 Date: _____ Witness: _____
50 *(Signature of witness)*
51

1
 2 _____
 3 Date: _____ Witness: _____
 4 _____
 5 _____
 6 _____
 7 _____
 8 _____
 9 _____

Box #2

If you elect to have your declaration notarized, have the following section completed by a qualified notary public:

_____ COUNTY, _____ STATE

15 Sworn to (or affirmed) and subscribed before me this day by _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____

24 Date: _____
 25 _____
 26 _____
 27 _____, Notary Public
 28 _____
 29 _____
 30 My commission expires: _____"
 31 _____

SECTION 2.2.(a) G.S. 90-321(c)(3), as amended by Section 1B(d) of this act, reads as rewritten:

- "(3) Except as provided in G.S. 90-321.1, ~~it either of the following:~~
 - a. It has been signed by the declarant in the presence of two witnesses who believe the declarant to be of sound mind and who state that they (i) are not related to the declarant by blood, marriage, or adoption, (ii) do not know or have a reasonable expectation that they would be entitled to any portion of the estate of the declarant upon the declarant's death under any will of the declarant or codicil to any will then existing or under the Intestate Succession Act, Chapter 29 of the General Statutes, (iii) are not the attending physician, licensed health care providers who are paid employees of the attending physician, paid employees of a health facility in which the declarant is a patient, or paid employees of a nursing home or any adult care home in which the declarant resides, and (iv) do not have a claim against any portion of the estate of the declarant at the time of the ~~declaration;~~ ~~and~~ declaration.
 - ~~(4)~~b. It has been proved before a clerk or assistant clerk of superior court, or a notary public who certifies substantially as set out in subsection (d1) of this section. A notary who takes the acknowledgement may but

is not required to be a paid employee of the attending physician, a paid employee of a health facility in which the declarant is a patient, or a paid employee of a nursing home or any adult care home in which the declarant resides."

SECTION 2.2.(b) G.S. 90-321(a)(1a) reads as rewritten:

"(1a) Declaration. – Except as provided in G.S. 90-321.1, any ~~signed, witnessed, dated, and proved~~ signed, witnessed or proved, and dated document meeting the requirements of subsection (c) of this section."

SECTION 2.2.(c) G.S. 90-321(d1), as amended by Section 1B(d) of this act, reads as rewritten:

"(d1) The following meets the requirements of subsection (c) of this section:

ADVANCE DIRECTIVE FOR A NATURAL DEATH ("LIVING WILL")

NOTE: YOU SHOULD USE THIS DOCUMENT TO GIVE YOUR HEALTH CARE PROVIDERS INSTRUCTIONS TO WITHHOLD OR WITHDRAW LIFE-PROLONGING MEASURES IN CERTAIN SITUATIONS. THERE IS NO LEGAL REQUIREMENT THAT ANYONE EXECUTE A LIVING WILL.

***GENERAL INSTRUCTIONS:** You can use this Advance Directive ("Living Will") form to give instructions for the future if you want your health care providers to withhold or withdraw life-prolonging measures in certain situations. You should talk to your doctor about what these terms mean. The Living Will states what choices you would have made for yourself if you were able to communicate. Talk to your family members, friends, and others you trust about your choices. Also, it is a good idea to talk with professionals such as your doctors, clergypersons, and lawyers before you complete and sign this Living Will.*

You do not have to use this form to give those instructions, but if you create your own Advance Directive you need to be very careful to ensure that it is consistent with North Carolina law.

This Living Will form is intended to be valid in any jurisdiction in which it is presented, but places outside North Carolina may impose requirements that this form does not meet.

*If you want to use this form, you must complete it, sign it, and have your signature witnessed by two qualified witnesses ~~and-or~~ proved by a notary public. Follow the instructions about which choices you can initial very carefully. **Do not sign this form until** two witnesses ~~and-or~~ a notary public are present to watch you sign it. You then should consider giving a copy to your primary physician and a trusted relative, and should consider filing it with the Advanced Health Care Directive Registry maintained by the North Carolina Secretary of State: <http://www.ncifelinks.org/ahcdr/State>.*

My Desire for a Natural Death

I, _____, being of sound mind, desire that, as specified below, my life not be prolonged by life-prolonging measures:

...

I hereby state that the declarant, _____, being of sound mind, signed (or directed another to sign on declarant's behalf) the foregoing Advance Directive for a Natural Death in my presence, and that I am not related to the declarant by blood, marriage, or adoption,

1 and I would not be entitled to any portion of the estate of the declarant under any existing will or
2 codicil of the declarant or as an heir under the Intestate Succession Act, Chapter 29 of the General
3 Statutes, if the declarant died on this date without a will. I also state that I am not the declarant's
4 attending physician or a licensed health care provider who is (1) an employee of the declarant's
5 attending physician, (2) nor an employee of the health facility in which the declarant is a patient,
6 or (3) an employee of a nursing home or any adult care home where the declarant resides. I further
7 state that I do not have any claim against the declarant or the estate of the declarant.

8
9 Box #1

10 If you elect to have your declaration witnessed, complete the following section:

11
12 Date: _____ Witness: _____
13 *(Signature of witness)*

14
15 _____
16 *(type/print name of witness)*

17
18 Date: _____ Witness: _____
19 *(Signature of witness)*

20
21 _____
22 *(type/print name of witness)*

23
24 Box #2

25 If you elect to have your declaration notarized, have the following section completed by a
26 qualified notary public:

27
28 _____ COUNTY, _____ STATE

29
30 Sworn to (or affirmed) and subscribed before me this day by _____
31 *(type/print name of declarant)*

32
33 _____
34 *(type/print name of witness)*

35
36 _____
37 *(type/print name of witness)*

38
39 Date _____
40 *(Official Seal)* _____ *Signature of Notary Public*

41
42 _____, Notary Public
43 *Printed or typed name*

44
45 My commission expires: _____ "

46
47 **PART III. CONTINGENT REPEAL AND EFFECTIVE DATE**

48 **SECTION 3.(a)** If House Bill 349, 2025 Regular Session, becomes law, Part II of
49 this act is repealed.

50 **SECTION 3.(b)** This act becomes effective January 1, 2027, and applies to
51 documents executed on or after that date. This act does not affect the validity of a health care

- 1 power of attorney, an advance directive, or an advance instruction for mental health treatment
- 2 executed prior to the effective date of this act.