

1 **SENATE FLOOR VERSION**

2 February 14, 2023

3 SENATE BILL NO. 1094

By: Howard

4
5
6 An Act relating to the Oklahoma Health Care Agent
7 Act; amending Sections 3 and 5, Chapter 136, O.S.L.
8 2022 (63 O.S. Supp. 2022, Sections 3111.3 and
9 3111.5), which relate to execution for power of
10 attorney for health care and form; modifying
11 signature requirement for power of attorney for
12 health care; updating statutory reference; modifying
13 certain form; and declaring an emergency.

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

15 SECTION 1. AMENDATORY Section 3, Chapter 136, O.S.L.
16 2022 (63 O.S. Supp. 2022, Section 3111.3), is amended to read as
17 follows:

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

21 B. A person with capacity may execute a power of attorney for
22 health care, which may authorize the agent to make any health care
23 decision the principal could have made while having capacity other
24 than the withholding or withdrawal of life-sustaining treatment,
nutrition, or hydration, which may only be authorized in compliance
with the Oklahoma Advance Directive Act; provided, however, the

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

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

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

21 E. An agent shall make health care decisions in accordance with
22 the principal's individual instructions, if any, and other wishes to
23 the extent known to the agent. Otherwise, the agent shall make the
24 decision in accordance with the agent's determination of the

1 principal's best interest. In determining the principal's best
2 interest, the agent shall consider the principal's personal values
3 to the extent known to the agent.

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

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

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

13 SECTION 2. AMENDATORY Section 5, Chapter 136, O.S.L.
14 2022 (63 O.S. Supp. 2022, Section 3111.5), is amended to read as
15 follows:

16 Section 3111.5. The following form may, but need not, be used
17 to create a power of attorney for health care. The other sections
18 of this act govern the effect of this form or any other writing used
19 to create a power of attorney for health care. An individual may
20 complete or modify all or any part of the following form to the
21 extent consistent with subsection B of Section ~~3~~ 3111.3 of this ~~act~~
22 title:

23 HEALTH CARE POWER OF ATTORNEY
24

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

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

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

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

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(address) (city) (state) (zip code)

(home phone) (work phone)

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

(name of individual you choose as first alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

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

(name of individual you choose as second alternate agent)

(address) (city) (state) (zip code)

(home phone) (work phone)

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

6 _____
7 _____
8 _____

9 (Add additional sheets if needed.)

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

15 _____
16 (Initials)

17 4. AGENT'S OBLIGATION: My agent shall make health care
18 decisions for me in accordance with this power of attorney for
19 health care and my other wishes to the extent known to my agent. To
20 the extent my wishes are unknown, my agent shall make health care
21 decisions for me in accordance with what my agent determines to be
22 in my best interest. In determining my best interest, my agent
23 shall consider the decisions I would have made myself to the extent
24 known to my agent.

1 _____

2 (Initials)

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

6 _____
7 _____

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

12 _____
13 _____

14 (Add additional sheets if needed.)

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

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

18 _____
19 (date) (sign your name)

20 _____
21 (address) (print your name)

22 _____
23 (city) (state)

24 State of Oklahoma

