



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/6/2004, by Terry Link

SYNOPSIS AS INTRODUCED:

20 ILCS 2310/2310-600

755 ILCS 45/4-1

755 ILCS 45/4-10

from Ch. 110 1/2, par. 804-1

from Ch. 110 1/2, par. 804-10

Amends the Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois and the Illinois Power of Attorney Act. Changes the title of the form to the Illinois Statutory Short Form Durable Power of Attorney for Health Care (instead of the Illinois Statutory Short Form Power of Attorney for Health Care).

LRB093 14819 LCB 40380 b

1 AN ACT concerning powers of attorney.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Department of Public Health Powers and
5 Duties Law of the Civil Administrative Code of Illinois is
6 amended by changing Section 2310-600 as follows:

7 (20 ILCS 2310/2310-600)

8 Sec. 2310-600. Advance directive information.

9 (a) The Department of Public Health shall prepare and
10 publish the summary of advance directives law in Illinois that
11 is required by the federal Patient Self-Determination Act.
12 Publication may be limited to the World Wide Web.

13 (b) The Department of Public Health shall adopt, by rule,
14 and publish Spanish language versions of the following:

15 (1) The statutory Living Will Declaration form.

16 (2) The Illinois Statutory Short Form Durable Power of
17 Attorney for Health Care.

18 (3) The statutory Declaration of Mental Health
19 Treatment Form.

20 (4) The summary of advance directives law in Illinois.

21 (5) Any statewide uniform Do Not Resuscitate forms.

22 Publication may be limited to the World Wide Web.

23 (b-5) In consultation with a statewide professional
24 organization representing physicians licensed to practice
25 medicine in all its branches, statewide organizations
26 representing nursing homes, and a statewide organization
27 representing hospitals, the Department of Public Health shall
28 develop and publish a uniform form for physician
29 do-not-resuscitate orders that may be utilized in all settings.
30 The form may be referred to as the Department of Public Health
31 Uniform DNR Order form.

32 (c) The Department of Public Health may contract with

1 statewide professional organizations representing physicians
2 licensed to practice medicine in all its branches to prepare
3 and publish materials required by this Section. The Department
4 of Public Health may consult with a statewide organization
5 representing registered professional nurses on preparing
6 materials required by this Section.

7 (Source: P.A. 91-789, eff. 1-1-01; 92-356, eff. 10-1-01.)

8 Section 10. The Illinois Power of Attorney Act is amended
9 by changing Sections 4-1 and 4-10 as follows:

10 (755 ILCS 45/4-1) (from Ch. 110 1/2, par. 804-1)

11 Sec. 4-1. Purpose. The General Assembly recognizes the
12 right of the individual to control all aspects of his or her
13 personal care and medical treatment, including the right to
14 decline medical treatment or to direct that it be withdrawn,
15 even if death ensues. The right of the individual to decide
16 about personal care overrides the obligation of the physician
17 and other health care providers to render care or to preserve
18 life and health.

19 However, if the individual becomes disabled, her or his
20 right to control treatment may be denied unless the individual,
21 as principal, can delegate the decision making power to a
22 trusted agent and be sure that the agent's power to make
23 personal and health care decisions for the principal will be
24 effective to the same extent as though made by the principal.

25 The Illinois statutory recognition of the right of
26 delegation for health care purposes needs to be restated to
27 make it clear that its scope is intended to be as broad as the
28 comparable right of delegation for property and financial
29 matters. However, the General Assembly recognizes that powers
30 concerning life and death and the other issues involved in
31 health care agencies are more sensitive than property matters
32 and that particular rules and forms are necessary for health
33 care agencies to insure their validity and efficacy and to
34 protect health care providers so that they will honor the

1 authority of the agent at all times. For purposes of emphasis
2 and their particular application to health care, the General
3 Assembly restates the purposes and public policy announced in
4 Article II, Section 2-1 of this Act as if those purposes and
5 public policies were set forth verbatim in this Section.

6 In furtherance of these purposes, the General Assembly
7 adopts this Article, setting forth general principles
8 governing health care agencies and a statutory short form
9 durable power of attorney for health care, intending that when
10 a power in substantially the form set forth in this Article is
11 used, health care providers and other third parties who rely in
12 good faith on the acts and decisions of the agent within the
13 scope of the power may do so without fear of civil or criminal
14 liability to the principal, the State or any other person.
15 However, the form of health care agency in this Article is not
16 intended to be exclusive and other forms of powers of attorney
17 chosen by the principal that comply with Section 4-5 of this
18 Article may offer powers and protection similar to the
19 statutory short form durable power of attorney for health care.
20 (Source: P.A. 85-1395.)

21 (755 ILCS 45/4-10) (from Ch. 110 1/2, par. 804-10)

22 Sec. 4-10. Statutory short form durable power of attorney
23 for health care.

24 (a) The following form (sometimes also referred to in this
25 Act as the "statutory health care power") may be used to grant
26 an agent powers with respect to the principal's own health
27 care; but the statutory health care power is not intended to be
28 exclusive nor to cover delegation of a parent's power to
29 control the health care of a minor child, and no provision of
30 this Article shall be construed to invalidate or bar use by the
31 principal of any other or different form of power of attorney
32 for health care. Nonstatutory health care powers must be
33 executed by the principal, designate the agent and the agent's
34 powers, and comply with Section 4-5 of this Article, but they
35 need not be witnessed or conform in any other respect to the

1 statutory health care power. When a power of attorney in
2 substantially the following form is used, including the
3 "notice" paragraph at the beginning in capital letters, it
4 shall have the meaning and effect prescribed in this Act. The
5 statutory health care power may be included in or combined with
6 any other form of power of attorney governing property or other
7 matters.

8 "ILLINOIS STATUTORY SHORT FORM DURABLE POWER OF ATTORNEY
9 FOR HEALTH CARE

10 (NOTICE: THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE
11 THE PERSON YOU DESIGNATE (YOUR "AGENT") BROAD POWERS TO MAKE
12 HEALTH CARE DECISIONS FOR YOU, INCLUDING POWER TO REQUIRE,
13 CONSENT TO OR WITHDRAW ANY TYPE OF PERSONAL CARE OR MEDICAL
14 TREATMENT FOR ANY PHYSICAL OR MENTAL CONDITION AND TO ADMIT YOU
15 TO OR DISCHARGE YOU FROM ANY HOSPITAL, HOME OR OTHER
16 INSTITUTION. THIS FORM DOES NOT IMPOSE A DUTY ON YOUR AGENT TO
17 EXERCISE GRANTED POWERS; BUT WHEN POWERS ARE EXERCISED, YOUR
18 AGENT WILL HAVE TO USE DUE CARE TO ACT FOR YOUR BENEFIT AND IN
19 ACCORDANCE WITH THIS FORM AND KEEP A RECORD OF RECEIPTS,
20 DISBURSEMENTS AND SIGNIFICANT ACTIONS TAKEN AS AGENT. A COURT
21 CAN TAKE AWAY THE POWERS OF YOUR AGENT IF IT FINDS THE AGENT IS
22 NOT ACTING PROPERLY. YOU MAY NAME SUCCESSOR AGENTS UNDER THIS
23 FORM BUT NOT CO-AGENTS, AND NO HEALTH CARE PROVIDER MAY BE
24 NAMED. UNLESS YOU EXPRESSLY LIMIT THE DURATION OF THIS POWER IN
25 THE MANNER PROVIDED BELOW, UNTIL YOU REVOKE THIS POWER OR A
26 COURT ACTING ON YOUR BEHALF TERMINATES IT, YOUR AGENT MAY
27 EXERCISE THE POWERS GIVEN HERE THROUGHOUT YOUR LIFETIME, EVEN
28 AFTER YOU BECOME DISABLED. THE POWERS YOU GIVE YOUR AGENT, YOUR
29 RIGHT TO REVOKE THOSE POWERS AND THE PENALTIES FOR VIOLATING
30 THE LAW ARE EXPLAINED MORE FULLY IN SECTIONS 4-5, 4-6, 4-9 AND
31 4-10(b) OF THE ILLINOIS "POWERS OF ATTORNEY FOR HEALTH CARE
32 LAW" OF WHICH THIS FORM IS A PART (SEE THE BACK OF THIS FORM).
33 THAT LAW EXPRESSLY PERMITS THE USE OF ANY DIFFERENT FORM OF
34 POWER OF ATTORNEY YOU MAY DESIRE. IF THERE IS ANYTHING ABOUT
35 THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER
36 TO EXPLAIN IT TO YOU.)

1 POWER OF ATTORNEY made thisday of
2

3 (month) (year)

4 1. I,,

5 (insert name and address of principal)

6 hereby appoint:

7

8 (insert name and address of agent)

9 as my attorney-in-fact (my "agent") to act for me and in my
10 name (in any way I could act in person) to make any and all
11 decisions for me concerning my personal care, medical
12 treatment, hospitalization and health care and to require,
13 withhold or withdraw any type of medical treatment or
14 procedure, even though my death may ensue. My agent shall have
15 the same access to my medical records that I have, including
16 the right to disclose the contents to others. My agent shall
17 also have full power to authorize an autopsy and direct the
18 disposition of my remains. Effective upon my death, my agent
19 has the full power to make an anatomical gift of the following
20 (initial one):

21Any organ.

22Specific organs:

23 (THE ABOVE GRANT OF POWER IS INTENDED TO BE AS BROAD AS
24 POSSIBLE SO THAT YOUR AGENT WILL HAVE AUTHORITY TO MAKE ANY
25 DECISION YOU COULD MAKE TO OBTAIN OR TERMINATE ANY TYPE OF
26 HEALTH CARE, INCLUDING WITHDRAWAL OF FOOD AND WATER AND OTHER
27 LIFE-SUSTAINING MEASURES, IF YOUR AGENT BELIEVES SUCH ACTION
28 WOULD BE CONSISTENT WITH YOUR INTENT AND DESIRES. IF YOU WISH
29 TO LIMIT THE SCOPE OF YOUR AGENT'S POWERS OR PRESCRIBE SPECIAL
30 RULES OR LIMIT THE POWER TO MAKE AN ANATOMICAL GIFT, AUTHORIZE
31 AUTOPSY OR DISPOSE OF REMAINS, YOU MAY DO SO IN THE FOLLOWING
32 PARAGRAPHS.)

33 2. The powers granted above shall not include the following
34 powers or shall be subject to the following rules or
35 limitations (here you may include any specific limitations you
36 deem appropriate, such as: your own definition of when

1 life-sustaining measures should be withheld; a direction to
 2 continue food and fluids or life-sustaining treatment in all
 3 events; or instructions to refuse any specific types of
 4 treatment that are inconsistent with your religious beliefs or
 5 unacceptable to you for any other reason, such as blood
 6 transfusion, electro-convulsive therapy, amputation,
 7 psychosurgery, voluntary admission to a mental institution,
 8 etc.):

9
 10
 11
 12
 13

14 (THE SUBJECT OF LIFE-SUSTAINING TREATMENT IS OF PARTICULAR
 15 IMPORTANCE. FOR YOUR CONVENIENCE IN DEALING WITH THAT SUBJECT,
 16 SOME GENERAL STATEMENTS CONCERNING THE WITHHOLDING OR REMOVAL
 17 OF LIFE-SUSTAINING TREATMENT ARE SET FORTH BELOW. IF YOU AGREE
 18 WITH ONE OF THESE STATEMENTS, YOU MAY INITIAL THAT STATEMENT;
 19 BUT DO NOT INITIAL MORE THAN ONE):

20 I do not want my life to be prolonged nor do I want
 21 life-sustaining treatment to be provided or continued if my
 22 agent believes the burdens of the treatment outweigh the
 23 expected benefits. I want my agent to consider the relief of
 24 suffering, the expense involved and the quality as well as the
 25 possible extension of my life in making decisions concerning
 26 life-sustaining treatment.

27 Initialed.....

28 I want my life to be prolonged and I want life-sustaining
 29 treatment to be provided or continued unless I am in a coma
 30 which my attending physician believes to be irreversible, in
 31 accordance with reasonable medical standards at the time of
 32 reference. If and when I have suffered irreversible coma, I
 33 want life-sustaining treatment to be withheld or discontinued.

34 Initialed.....

35 I want my life to be prolonged to the greatest extent
 36 possible without regard to my condition, the chances I have for

1 recovery or the cost of the procedures.

2 Initialed.....

3 (THIS POWER OF ATTORNEY MAY BE AMENDED OR REVOKED BY YOU IN THE
4 MANNER PROVIDED IN SECTION 4-6 OF THE ILLINOIS "DURABLE POWERS
5 OF ATTORNEY FOR HEALTH CARE LAW" (SEE THE BACK OF THIS FORM).
6 ABSENT AMENDMENT OR REVOCATION, THE AUTHORITY GRANTED IN THIS
7 POWER OF ATTORNEY WILL BECOME EFFECTIVE AT THE TIME THIS POWER
8 IS SIGNED AND WILL CONTINUE UNTIL YOUR DEATH, AND BEYOND IF
9 ANATOMICAL GIFT, AUTOPSY OR DISPOSITION OF REMAINS IS
10 AUTHORIZED, UNLESS A LIMITATION ON THE BEGINNING DATE OR
11 DURATION IS MADE BY INITIALING AND COMPLETING EITHER OR BOTH OF
12 THE FOLLOWING:)

13 3. () This power of attorney shall become effective on
14
15

16 (insert a future date or event during your lifetime, such as
17 court determination of your disability, when you want this
18 power to first take effect)

19 4. () This power of attorney shall terminate on
20

21 (insert a future date or event, such as court determination of
22 your disability, when you want this power to terminate prior to
23 your death)

24 (IF YOU WISH TO NAME SUCCESSOR AGENTS, INSERT THE NAMES AND
25 ADDRESSES OF SUCH SUCCESSORS IN THE FOLLOWING PARAGRAPH.)

26 5. If any agent named by me shall die, become incompetent,
27 resign, refuse to accept the office of agent or be unavailable,
28 I name the following (each to act alone and successively, in
29 the order named) as successors to such agent:

30
31

32 For purposes of this paragraph 5, a person shall be considered
33 to be incompetent if and while the person is a minor or an
34 adjudicated incompetent or disabled person or the person is
35 unable to give prompt and intelligent consideration to health
36 care matters, as certified by a licensed physician. (IF YOU

1 WISH TO NAME YOUR AGENT AS GUARDIAN OF YOUR PERSON, IN THE
 2 EVENT A COURT DECIDES THAT ONE SHOULD BE APPOINTED, YOU MAY,
 3 BUT ARE NOT REQUIRED TO, DO SO BY RETAINING THE FOLLOWING
 4 PARAGRAPH. THE COURT WILL APPOINT YOUR AGENT IF THE COURT FINDS
 5 THAT SUCH APPOINTMENT WILL SERVE YOUR BEST INTERESTS AND
 6 WELFARE. STRIKE OUT PARAGRAPH 6 IF YOU DO NOT WANT YOUR AGENT
 7 TO ACT AS GUARDIAN.)

8 6. If a guardian of my person is to be appointed, I
 9 nominate the agent acting under this power of attorney as such
 10 guardian, to serve without bond or security.

11 7. I am fully informed as to all the contents of this form
 12 and understand the full import of this grant of powers to my
 13 agent.

14 Signed.....
 15 (principal)

16 The principal has had an opportunity to read the above form
 17 and has signed the form or acknowledged his or her signature or
 18 mark on the form in my presence.

19 Residing at.....
 20 (witness)

21 (YOU MAY, BUT ARE NOT REQUIRED TO, REQUEST YOUR AGENT AND
 22 SUCCESSOR AGENTS TO PROVIDE SPECIMEN SIGNATURES BELOW. IF YOU
 23 INCLUDE SPECIMEN SIGNATURES IN THIS POWER OF ATTORNEY, YOU MUST
 24 COMPLETE THE CERTIFICATION OPPOSITE THE SIGNATURES OF THE
 25 AGENTS.)

26 Specimen signatures of I certify that the signatures of my
 27 agent (and successors). agent (and successors) are correct.
 28
 29 (agent) (principal)

30
 31 (successor agent) (principal)

32
 33 (successor agent) (principal)"

34 (b) The statutory short form durable power of attorney for
 35 health care (the "statutory health care power") authorizes the
 36 agent to make any and all health care decisions on behalf of

1 the principal which the principal could make if present and
2 under no disability, subject to any limitations on the granted
3 powers that appear on the face of the form, to be exercised in
4 such manner as the agent deems consistent with the intent and
5 desires of the principal. The agent will be under no duty to
6 exercise granted powers or to assume control of or
7 responsibility for the principal's health care; but when
8 granted powers are exercised, the agent will be required to use
9 due care to act for the benefit of the principal in accordance
10 with the terms of the statutory health care power and will be
11 liable for negligent exercise. The agent may act in person or
12 through others reasonably employed by the agent for that
13 purpose but may not delegate authority to make health care
14 decisions. The agent may sign and deliver all instruments,
15 negotiate and enter into all agreements and do all other acts
16 reasonably necessary to implement the exercise of the powers
17 granted to the agent. Without limiting the generality of the
18 foregoing, the statutory health care power shall include the
19 following powers, subject to any limitations appearing on the
20 face of the form:

21 (1) The agent is authorized to give consent to and
22 authorize or refuse, or to withhold or withdraw consent to, any
23 and all types of medical care, treatment or procedures relating
24 to the physical or mental health of the principal, including
25 any medication program, surgical procedures, life-sustaining
26 treatment or provision of food and fluids for the principal.

27 (2) The agent is authorized to admit the principal to or
28 discharge the principal from any and all types of hospitals,
29 institutions, homes, residential or nursing facilities,
30 treatment centers and other health care institutions providing
31 personal care or treatment for any type of physical or mental
32 condition. The agent shall have the same right to visit the
33 principal in the hospital or other institution as is granted to
34 a spouse or adult child of the principal, any rule of the
35 institution to the contrary notwithstanding.

36 (3) The agent is authorized to contract for any and all

1 types of health care services and facilities in the name of and
2 on behalf of the principal and to bind the principal to pay for
3 all such services and facilities, and to have and exercise
4 those powers over the principal's property as are authorized
5 under the statutory property power, to the extent the agent
6 deems necessary to pay health care costs; and the agent shall
7 not be personally liable for any services or care contracted
8 for on behalf of the principal.

9 (4) At the principal's expense and subject to reasonable
10 rules of the health care provider to prevent disruption of the
11 principal's health care, the agent shall have the same right
12 the principal has to examine and copy and consent to disclosure
13 of all the principal's medical records that the agent deems
14 relevant to the exercise of the agent's powers, whether the
15 records relate to mental health or any other medical condition
16 and whether they are in the possession of or maintained by any
17 physician, psychiatrist, psychologist, therapist, hospital,
18 nursing home or other health care provider.

19 (5) The agent is authorized: to direct that an autopsy be
20 made pursuant to Section 2 of "An Act in relation to autopsy of
21 dead bodies", approved August 13, 1965, including all
22 amendments; to make a disposition of any part or all of the
23 principal's body pursuant to the Uniform Anatomical Gift Act,
24 as now or hereafter amended; and to direct the disposition of
25 the principal's remains.

26 (Source: P.A. 91-240, eff. 1-1-00.)