



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB4626

Introduced 2/5/2020, by Rep. William Davis

SYNOPSIS AS INTRODUCED:

755 ILCS 45/4-6
755 ILCS 45/4-10

from Ch. 110 1/2, par. 804-6
from Ch. 110 1/2, par. 804-10

Amends the Illinois Power of Attorney Act. Provides that a principal may elect a 30-day delayed revocation of the principal's health care agency. Makes a corresponding change. Effective immediately.

LRB101 17492 LNS 66902 b

1 AN ACT concerning civil law.

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

4 Section 5. The Illinois Power of Attorney Act is amended by
5 changing Sections 4-6 and 4-10 as follows:

6 (755 ILCS 45/4-6) (from Ch. 110 1/2, par. 804-6)

7 Sec. 4-6. Revocation and amendment of health care agencies.

8 (a) Unless the principal elects a delayed revocation period
9 pursuant to subsection (a-5), every ~~Every~~ health care agency
10 may be revoked by the principal at any time, without regard to
11 the principal's mental or physical condition, by any of the
12 following methods:

13 1. By being obliterated, burnt, torn or otherwise
14 destroyed or defaced in a manner indicating intention to
15 revoke;

16 2. By a written revocation of the agency signed and
17 dated by the principal or person acting at the direction of
18 the principal, regardless of whether the written
19 revocation is in an electronic or hard copy format;

20 3. By an oral or any other expression of the intent to
21 revoke the agency in the presence of a witness 18 years of
22 age or older who signs and dates a writing confirming that
23 such expression of intent was made; or

1 4. For an electronic health care agency, by deleting in
2 a manner indicating the intention to revoke. An electronic
3 health care agency may be revoked electronically using a
4 generic, technology-neutral system in which each user is
5 assigned a unique identifier that is securely maintained
6 and in a manner that meets the regulatory requirements for
7 a digital or electronic signature. Compliance with the
8 standards defined in the Electronic Commerce Security Act
9 or the implementing rules of the Hospital Licensing Act for
10 medical record entry authentication for author validation
11 of the documentation, content accuracy, and completeness
12 meets this standard.

13 (a-5) A principal may elect a 30-day delay of the
14 revocation of the principal's health care agency. If a
15 principal makes this election, the principal's revocation
16 shall be delayed for 30 days after the principal communicates
17 his or her intent to revoke.

18 (b) Every health care agency may be amended at any time by
19 a written amendment signed and dated by the principal or person
20 acting at the direction of the principal.

21 (c) Any person, other than the agent, to whom a revocation
22 or amendment is communicated or delivered shall make all
23 reasonable efforts to inform the agent of that fact as promptly
24 as possible.

25 (Source: P.A. 101-163, eff. 1-1-20.)

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

2 Sec. 4-10. Statutory short form power of attorney for
3 health care.

4 (a) The form prescribed in this Section (sometimes also
5 referred to in this Act as the "statutory health care power")
6 may be used to grant an agent powers with respect to the
7 principal's own health care; but the statutory health care
8 power is not intended to be exclusive nor to cover delegation
9 of a parent's power to control the health care of a minor
10 child, and no provision of this Article shall be construed to
11 invalidate or bar use by the principal of any other or
12 different form of power of attorney for health care.
13 Nonstatutory health care powers must be executed by the
14 principal, designate the agent and the agent's powers, and
15 comply with the limitations in Section 4-5 of this Article, but
16 they need not be witnessed or conform in any other respect to
17 the statutory health care power.

18 No specific format is required for the statutory health
19 care power of attorney other than the notice must precede the
20 form. The statutory health care power may be included in or
21 combined with any other form of power of attorney governing
22 property or other matters.

23 The signature and execution requirements set forth in this
24 Article are satisfied by: (i) written signatures or initials;
25 or (ii) electronic signatures or computer-generated signature
26 codes. Electronic documents under this Act may be created,

1 signed, or revoked electronically using a generic,
2 technology-neutral system in which each user is assigned a
3 unique identifier that is securely maintained and in a manner
4 that meets the regulatory requirements for a digital or
5 electronic signature. Compliance with the standards defined in
6 the Electronic Commerce Security Act or the implementing rules
7 of the Hospital Licensing Act for medical record entry
8 authentication for author validation of the documentation,
9 content accuracy, and completeness meets this standard.

10 (b) The Illinois Statutory Short Form Power of Attorney for
11 Health Care shall be substantially as follows:

12 NOTICE TO THE INDIVIDUAL SIGNING

13 THE POWER OF ATTORNEY FOR HEALTH CARE

14 No one can predict when a serious illness or accident might
15 occur. When it does, you may need someone else to speak or make
16 health care decisions for you. If you plan now, you can
17 increase the chances that the medical treatment you get will be
18 the treatment you want.

19 In Illinois, you can choose someone to be your "health care
20 agent". Your agent is the person you trust to make health care
21 decisions for you if you are unable or do not want to make them
22 yourself. These decisions should be based on your personal
23 values and wishes.

24 It is important to put your choice of agent in writing. The
25 written form is often called an "advance directive". You may

1 use this form or another form, as long as it meets the legal
2 requirements of Illinois. There are many written and on-line
3 resources to guide you and your loved ones in having a
4 conversation about these issues. You may find it helpful to
5 look at these resources while thinking about and discussing
6 your advance directive.

7 WHAT ARE THE THINGS I WANT MY
8 HEALTH CARE AGENT TO KNOW?

9 The selection of your agent should be considered carefully,
10 as your agent will have the ultimate decision-making authority
11 once this document goes into effect, in most instances after
12 you are no longer able to make your own decisions. While the
13 goal is for your agent to make decisions in keeping with your
14 preferences and in the majority of circumstances that is what
15 happens, please know that the law does allow your agent to make
16 decisions to direct or refuse health care interventions or
17 withdraw treatment. Your agent will need to think about
18 conversations you have had, your personality, and how you
19 handled important health care issues in the past. Therefore, it
20 is important to talk with your agent and your family about such
21 things as:

22 (i) What is most important to you in your life?

23 (ii) How important is it to you to avoid pain and
24 suffering?

25 (iii) If you had to choose, is it more important to you

1 to live as long as possible, or to avoid prolonged
2 suffering or disability?

3 (iv) Would you rather be at home or in a hospital for
4 the last days or weeks of your life?

5 (v) Do you have religious, spiritual, or cultural
6 beliefs that you want your agent and others to consider?

7 (vi) Do you wish to make a significant contribution to
8 medical science after your death through organ or whole
9 body donation?

10 (vii) Do you have an existing advance directive, such
11 as a living will, that contains your specific wishes about
12 health care that is only delaying your death? If you have
13 another advance directive, make sure to discuss with your
14 agent the directive and the treatment decisions contained
15 within that outline your preferences. Make sure that your
16 agent agrees to honor the wishes expressed in your advance
17 directive.

18 WHAT KIND OF DECISIONS CAN MY AGENT MAKE?

19 If there is ever a period of time when your physician
20 determines that you cannot make your own health care decisions,
21 or if you do not want to make your own decisions, some of the
22 decisions your agent could make are to:

23 (i) talk with physicians and other health care
24 providers about your condition.

25 (ii) see medical records and approve who else can see

1 them.

2 (iii) give permission for medical tests, medicines,
3 surgery, or other treatments.

4 (iv) choose where you receive care and which physicians
5 and others provide it.

6 (v) decide to accept, withdraw, or decline treatments
7 designed to keep you alive if you are near death or not
8 likely to recover. You may choose to include guidelines
9 and/or restrictions to your agent's authority.

10 (vi) agree or decline to donate your organs or your
11 whole body if you have not already made this decision
12 yourself. This could include donation for transplant,
13 research, and/or education. You should let your agent know
14 whether you are registered as a donor in the First Person
15 Consent registry maintained by the Illinois Secretary of
16 State or whether you have agreed to donate your whole body
17 for medical research and/or education.

18 (vii) decide what to do with your remains after you
19 have died, if you have not already made plans.

20 (viii) talk with your other loved ones to help come to
21 a decision (but your designated agent will have the final
22 say over your other loved ones).

23 Your agent is not automatically responsible for your health
24 care expenses.

25 WHOM SHOULD I CHOOSE TO BE MY HEALTH CARE AGENT?

1 You can pick a family member, but you do not have to. Your
2 agent will have the responsibility to make medical treatment
3 decisions, even if other people close to you might urge a
4 different decision. The selection of your agent should be done
5 carefully, as he or she will have ultimate decision-making
6 authority for your treatment decisions once you are no longer
7 able to voice your preferences. Choose a family member, friend,
8 or other person who:

9 (i) is at least 18 years old;

10 (ii) knows you well;

11 (iii) you trust to do what is best for you and is
12 willing to carry out your wishes, even if he or she may not
13 agree with your wishes;

14 (iv) would be comfortable talking with and questioning
15 your physicians and other health care providers;

16 (v) would not be too upset to carry out your wishes if
17 you became very sick; and

18 (vi) can be there for you when you need it and is
19 willing to accept this important role.

20 WHAT IF MY AGENT IS NOT AVAILABLE OR IS

21 UNWILLING TO MAKE DECISIONS FOR ME?

22 If the person who is your first choice is unable to carry
23 out this role, then the second agent you chose will make the
24 decisions; if your second agent is not available, then the
25 third agent you chose will make the decisions. The second and

1 third agents are called your successor agents and they function
2 as back-up agents to your first choice agent and may act only
3 one at a time and in the order you list them.

4 WHAT WILL HAPPEN IF I DO NOT
5 CHOOSE A HEALTH CARE AGENT?

6 If you become unable to make your own health care decisions
7 and have not named an agent in writing, your physician and
8 other health care providers will ask a family member, friend,
9 or guardian to make decisions for you. In Illinois, a law
10 directs which of these individuals will be consulted. In that
11 law, each of these individuals is called a "surrogate".

12 There are reasons why you may want to name an agent rather
13 than rely on a surrogate:

14 (i) The person or people listed by this law may not be
15 who you would want to make decisions for you.

16 (ii) Some family members or friends might not be able
17 or willing to make decisions as you would want them to.

18 (iii) Family members and friends may disagree with one
19 another about the best decisions.

20 (iv) Under some circumstances, a surrogate may not be
21 able to make the same kinds of decisions that an agent can
22 make.

23 WHAT IF THERE IS NO ONE AVAILABLE
24 WHOM I TRUST TO BE MY AGENT?

1 In this situation, it is especially important to talk to
2 your physician and other health care providers and create
3 written guidance about what you want or do not want, in case
4 you are ever critically ill and cannot express your own wishes.
5 You can complete a living will. You can also write your wishes
6 down and/or discuss them with your physician or other health
7 care provider and ask him or her to write it down in your
8 chart. You might also want to use written or on-line resources
9 to guide you through this process.

10 WHAT DO I DO WITH THIS FORM ONCE I COMPLETE IT?

11 Follow these instructions after you have completed the
12 form:

13 (i) Sign the form in front of a witness. See the form
14 for a list of who can and cannot witness it.

15 (ii) Ask the witness to sign it, too.

16 (iii) There is no need to have the form notarized.

17 (iv) Give a copy to your agent and to each of your
18 successor agents.

19 (v) Give another copy to your physician.

20 (vi) Take a copy with you when you go to the hospital.

21 (vii) Show it to your family and friends and others who
22 care for you.

23 WHAT IF I CHANGE MY MIND?

24 You may change your mind at any time. If you do, tell

1 someone who is at least 18 years old that you have changed your
2 mind, and/or destroy your document and any copies. If you wish,
3 fill out a new form and make sure everyone you gave the old
4 form to has a copy of the new one, including, but not limited
5 to, your agents and your physicians. If you are concerned you
6 may revoke your power of attorney at a time when you may need
7 it the most, you may initial the box at the end of the form to
8 indicate that you would like a 30-day waiting period after you
9 voice your intent to revoke your power of attorney. This means
10 if your agent is making decisions for you during that time,
11 your agent can continue to make decisions on your behalf. This
12 election is purely optional, and you do not have to choose it.
13 If you do not choose this option, you can change your mind and
14 revoke the power of attorney at any time.

15 WHAT IF I DO NOT WANT TO USE THIS FORM?

16 In the event you do not want to use the Illinois statutory
17 form provided here, any document you complete must be executed
18 by you, designate an agent who is over 18 years of age and not
19 prohibited from serving as your agent, and state the agent's
20 powers, but it need not be witnessed or conform in any other
21 respect to the statutory health care power.

22 If you have questions about the use of any form, you may
23 want to consult your physician, other health care provider,
24 and/or an attorney.

1 MY POWER OF ATTORNEY FOR HEALTH CARE

2 THIS POWER OF ATTORNEY REVOKES ALL PREVIOUS POWERS OF ATTORNEY
3 FOR HEALTH CARE. (You must sign this form and a witness must
4 also sign it before it is valid)

5 My name (Print your full name):

6 My address:

7 I WANT THE FOLLOWING PERSON TO BE MY HEALTH CARE AGENT

8 (an agent is your personal representative under state and
9 federal law):

10 (Agent name)

11 (Agent address)

12 (Agent phone number)

13 (Please check box if applicable) If a guardian of my
14 person is to be appointed, I nominate the agent acting under
15 this power of attorney as guardian.

16 SUCCESSOR HEALTH CARE AGENT(S) (optional):

17 If the agent I selected is unable or does not want to make
18 health care decisions for me, then I request the person(s) I
19 name below to be my successor health care agent(s). Only one
20 person at a time can serve as my agent (add another page if you
21 want to add more successor agent names):

1
2

(Successor agent #1 name, address and phone number)

3
4

(Successor agent #2 name, address and phone number)

5 MY AGENT CAN MAKE HEALTH CARE DECISIONS FOR ME, INCLUDING:

6 (i) Deciding to accept, withdraw or decline treatment
7 for any physical or mental condition of mine, including
8 life-and-death decisions.

9 (ii) Agreeing to admit me to or discharge me from any
10 hospital, home, or other institution, including a mental
11 health facility.

12 (iii) Having complete access to my medical and mental
13 health records, and sharing them with others as needed,
14 including after I die.

15 (iv) Carrying out the plans I have already made, or, if
16 I have not done so, making decisions about my body or
17 remains, including organ, tissue or whole body donation,
18 autopsy, cremation, and burial.

19 The above grant of power is intended to be as broad as
20 possible so that my agent will have the authority to make any
21 decision I could make to obtain or terminate any type of health
22 care, including withdrawal of nutrition and hydration and other
23 life-sustaining measures.

24 I AUTHORIZE MY AGENT TO (please check any one box):

1 Make decisions for me only when I cannot make them for
2 myself. The physician(s) taking care of me will determine
3 when I lack this ability.

4 (If no box is checked, then the box above shall be
5 implemented.) OR

6 Make decisions for me only when I cannot make them for
7 myself. The physician(s) taking care of me will determine
8 when I lack this ability. Starting now, for the purpose of
9 assisting me with my health care plans and decisions, my
10 agent shall have complete access to my medical and mental
11 health records, the authority to share them with others as
12 needed, and the complete ability to communicate with my
13 personal physician(s) and other health care providers,
14 including the ability to require an opinion of my physician
15 as to whether I lack the ability to make decisions for
16 myself. OR

17 Make decisions for me starting now and continuing
18 after I am no longer able to make them for myself. While I
19 am still able to make my own decisions, I can still do so
20 if I want to.

21 The subject of life-sustaining treatment is of particular
22 importance. Life-sustaining treatments may include tube
23 feedings or fluids through a tube, breathing machines, and CPR.
24 In general, in making decisions concerning life-sustaining
25 treatment, your agent is instructed to consider the relief of

1 suffering, the quality as well as the possible extension of
2 your life, and your previously expressed wishes. Your agent
3 will weigh the burdens versus benefits of proposed treatments
4 in making decisions on your behalf.

5 Additional statements concerning the withholding or
6 removal of life-sustaining treatment are described below.
7 These can serve as a guide for your agent when making decisions
8 for you. Ask your physician or health care provider if you have
9 any questions about these statements.

10 SELECT ONLY ONE STATEMENT BELOW THAT BEST EXPRESSES YOUR WISHES
11 (optional):

12 The quality of my life is more important than the
13 length of my life. If I am unconscious and my attending
14 physician believes, in accordance with reasonable medical
15 standards, that I will not wake up or recover my ability to
16 think, communicate with my family and friends, and
17 experience my surroundings, I do not want treatments to
18 prolong my life or delay my death, but I do want treatment
19 or care to make me comfortable and to relieve me of pain.

20 Staying alive is more important to me, no matter how
21 sick I am, how much I am suffering, the cost of the
22 procedures, or how unlikely my chances for recovery are. I
23 want my life to be prolonged to the greatest extent
24 possible in accordance with reasonable medical standards.

1 SPECIFIC LIMITATIONS TO MY AGENT'S DECISION-MAKING AUTHORITY:

2 The above grant of power is intended to be as broad as
3 possible so that your agent will have the authority to make any
4 decision you could make to obtain or terminate any type of
5 health care. If you wish to limit the scope of your agent's
6 powers or prescribe special rules or limit the power to
7 authorize autopsy or dispose of remains, you may do so
8 specifically in this form.

9
10

11 My signature:.....

12 Today's date:.....

13 DELAYED REVOCATION

14 I elect to delay revocation of this power of attorney
15 for 30 days after I communicate my intent to revoke it.

16 I elect for the revocation of this power of attorney
17 to take effect immediately if I communicate my intent to revoke
18 it.

19 HAVE YOUR WITNESS AGREE TO WHAT IS WRITTEN BELOW, AND THEN
20 COMPLETE THE SIGNATURE PORTION:

21 I am at least 18 years old. (check one of the options
22 below):

23 I saw the principal sign this document, or

1 the principal told me that the signature or mark on
2 the principal signature line is his or hers.

3 I am not the agent or successor agent(s) named in this
4 document. I am not related to the principal, the agent, or the
5 successor agent(s) by blood, marriage, or adoption. I am not
6 the principal's physician, advanced practice registered nurse,
7 dentist, podiatric physician, optometrist, psychologist, or a
8 relative of one of those individuals. I am not an owner or
9 operator (or the relative of an owner or operator) of the
10 health care facility where the principal is a patient or
11 resident.

12 Witness printed name:

13 Witness address:

14 Witness signature:

15 Today's date:

16 (c) The statutory short form power of attorney for health
17 care (the "statutory health care power") authorizes the agent
18 to make any and all health care decisions on behalf of the
19 principal which the principal could make if present and under
20 no disability, subject to any limitations on the granted powers
21 that appear on the face of the form, to be exercised in such
22 manner as the agent deems consistent with the intent and
23 desires of the principal. The agent will be under no duty to
24 exercise granted powers or to assume control of or
25 responsibility for the principal's health care; but when

1 granted powers are exercised, the agent will be required to use
2 due care to act for the benefit of the principal in accordance
3 with the terms of the statutory health care power and will be
4 liable for negligent exercise. The agent may act in person or
5 through others reasonably employed by the agent for that
6 purpose but may not delegate authority to make health care
7 decisions. The agent may sign and deliver all instruments,
8 negotiate and enter into all agreements and do all other acts
9 reasonably necessary to implement the exercise of the powers
10 granted to the agent. Without limiting the generality of the
11 foregoing, the statutory health care power shall include the
12 following powers, subject to any limitations appearing on the
13 face of the form:

14 (1) The agent is authorized to give consent to and
15 authorize or refuse, or to withhold or withdraw consent to,
16 any and all types of medical care, treatment or procedures
17 relating to the physical or mental health of the principal,
18 including any medication program, surgical procedures,
19 life-sustaining treatment or provision of food and fluids
20 for the principal.

21 (2) The agent is authorized to admit the principal to
22 or discharge the principal from any and all types of
23 hospitals, institutions, homes, residential or nursing
24 facilities, treatment centers and other health care
25 institutions providing personal care or treatment for any
26 type of physical or mental condition. The agent shall have

1 the same right to visit the principal in the hospital or
2 other institution as is granted to a spouse or adult child
3 of the principal, any rule of the institution to the
4 contrary notwithstanding.

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

14 (4) At the principal's expense and subject to
15 reasonable rules of the health care provider to prevent
16 disruption of the principal's health care, the agent shall
17 have the same right the principal has to examine and copy
18 and consent to disclosure of all the principal's medical
19 records that the agent deems relevant to the exercise of
20 the agent's powers, whether the records relate to mental
21 health or any other medical condition and whether they are
22 in the possession of or maintained by any physician,
23 psychiatrist, psychologist, therapist, hospital, nursing
24 home or other health care provider. The authority under
25 this paragraph (4) applies to any information governed by
26 the Health Insurance Portability and Accountability Act of

1 1996 ("HIPAA") and regulations thereunder. The agent
2 serves as the principal's personal representative, as that
3 term is defined under HIPAA and regulations thereunder.

4 (5) The agent is authorized: to direct that an autopsy
5 be made pursuant to Section 2 of the Autopsy Act; to make a
6 disposition of any part or all of the principal's body
7 pursuant to the Illinois Anatomical Gift Act, as now or
8 hereafter amended; and to direct the disposition of the
9 principal's remains.

10 (6) At any time during which there is no executor or
11 administrator appointed for the principal's estate, the
12 agent is authorized to continue to pursue an application or
13 appeal for government benefits if those benefits were
14 applied for during the life of the principal.

15 (d) A physician may determine that the principal is unable
16 to make health care decisions for himself or herself only if
17 the principal lacks decisional capacity, as that term is
18 defined in Section 10 of the Health Care Surrogate Act.

19 (e) If the principal names the agent as a guardian on the
20 statutory short form, and if a court decides that the
21 appointment of a guardian will serve the principal's best
22 interests and welfare, the court shall appoint the agent to
23 serve without bond or security.

24 (Source: P.A. 100-513, eff. 1-1-18; 101-81, eff. 7-12-19;
25 101-163, eff. 1-1-20.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.