

HB0679



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB0679

Introduced 2/8/2021, 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 corresponding changes. Effective immediately.

LRB102 12655 LNS 17994 b

A BILL FOR

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
5 by 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
8 agencies.

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

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

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

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

1 such expression of intent was made; or

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

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

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

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

26 (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,
16 but they need not be witnessed or conform in any other respect
17 to 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

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

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

13 NOTICE TO THE INDIVIDUAL SIGNING

14 THE POWER OF ATTORNEY FOR HEALTH CARE

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

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

25 It is important to put your choice of agent in writing. The

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

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

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

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

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

1 (iii) If you had to choose, is it more important to you
2 to live as long as possible, or to avoid prolonged
3 suffering or disability?

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

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

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

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

19 WHAT KIND OF DECISIONS CAN MY AGENT MAKE?

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

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

1 (ii) see medical records and approve who else can see
2 them.

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

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

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

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

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

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

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

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

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

10 (i) is at least 18 years old;

11 (ii) knows you well;

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

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

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

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

21 WHAT IF MY AGENT IS NOT AVAILABLE OR IS

22 UNWILLING TO MAKE DECISIONS FOR ME?

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

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

5 WHAT WILL HAPPEN IF I DO NOT

6 CHOOSE A HEALTH CARE AGENT?

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

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

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

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

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

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

1 WHAT IF THERE IS NO ONE AVAILABLE

2 WHOM I TRUST TO BE MY AGENT?

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

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

13 Follow these instructions after you have completed the
14 form:

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

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

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

19 (iv) Give a copy to your agent and to each of your
20 successor agents.

21 (v) Give another copy to your physician.

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

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

1 WHAT IF I CHANGE MY MIND?

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

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

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

24 If you have questions about the use of any form, you may
25 want to consult your physician, other health care provider,

1 and/or an attorney.

2 MY POWER OF ATTORNEY FOR HEALTH CARE

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

6 My name (Print your full name):

7 My address:

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

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

11 (Agent name)

12 (Agent address)

13 (Agent phone number)

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

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

18 If the agent I selected is unable or does not want to make
19 health care decisions for me, then I request the person(s) I
20 name below to be my successor health care agent(s). Only one

1 person at a time can serve as my agent (add another page if you
2 want to add more successor agent names):

3

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

5

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

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

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

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

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

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

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

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

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

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

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

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

22 The subject of life-sustaining treatment is of particular
23 importance. Life-sustaining treatments may include tube
24 feedings or fluids through a tube, breathing machines, and

1 CPR. In general, in making decisions concerning
2 life-sustaining treatment, your agent is instructed to
3 consider the relief of suffering, the quality as well as the
4 possible extension of your life, and your previously expressed
5 wishes. Your agent will weigh the burdens versus benefits of
6 proposed treatments in making decisions on your behalf.

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

12 SELECT ONLY ONE STATEMENT BELOW THAT BEST EXPRESSES YOUR
13 WISHES (optional):

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

22 Staying alive is more important to me, no matter how
23 sick I am, how much I am suffering, the cost of the
24 procedures, or how unlikely my chances for recovery are. I
25 want my life to be prolonged to the greatest extent

1 possible in accordance with reasonable medical standards.

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

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

10

11

12 My signature:.....

13 Today's date:.....

14 DELAYED REVOCATION

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

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

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

22 I am at least 18 years old. (check one of the options

1 below):

2 I saw the principal sign this document, or
3 the principal told me that the signature or mark on
4 the principal signature line is his or hers.

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

14 Witness printed name:.....
15 Witness address:
16 Witness signature:
17 Today's date:.....

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

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

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

23 (2) The agent is authorized to admit the principal to
24 or discharge the principal from any and all types of
25 hospitals, institutions, homes, residential or nursing
26 facilities, treatment centers and other health care

1 institutions providing personal care or treatment for any
2 type of physical or mental condition. The agent shall have
3 the same right to visit the principal in the hospital or
4 other institution as is granted to a spouse or adult child
5 of the principal, any rule of the institution to the
6 contrary notwithstanding.

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

17 (4) At the principal's expense and subject to
18 reasonable rules of the health care provider to prevent
19 disruption of the principal's health care, the agent shall
20 have the same right the principal has to examine and copy
21 and consent to disclosure of all the principal's medical
22 records that the agent deems relevant to the exercise of
23 the agent's powers, whether the records relate to mental
24 health or any other medical condition and whether they are
25 in the possession of or maintained by any physician,
26 psychiatrist, psychologist, therapist, hospital, nursing

1 home or other health care provider. The authority under
2 this paragraph (4) applies to any information governed by
3 the Health Insurance Portability and Accountability Act of
4 1996 ("HIPAA") and regulations thereunder. The agent
5 serves as the principal's personal representative, as that
6 term is defined under HIPAA and regulations thereunder.

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

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

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

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

1 (Source: P.A. 100-513, eff. 1-1-18; 101-81, eff. 7-12-19;
2 101-163, eff. 1-1-20.)

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.