

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 4-5.1, 4-10, and 4-12 as follows:

6 (755 ILCS 45/4-5.1)

7 Sec. 4-5.1. Limitations on who may witness health care
8 agencies.

9 (a) Every health care agency shall bear the signature of a
10 witness to the signing of the agency. No witness may be under
11 18 years of age. None of the following licensed professionals
12 providing services to the principal may serve as a witness to
13 the signing of a health care agency:

14 (1) the attending physician, advanced practice nurse,
15 physician assistant, dentist, podiatric physician,
16 optometrist, or psychologist ~~mental health service~~
17 ~~provider~~ of the principal, or a relative of the physician,
18 advanced practice nurse, physician assistant, dentist,
19 podiatric physician, optometrist, or psychologist ~~mental~~
20 ~~health service provider~~;

21 (2) an owner, operator, or relative of an owner or
22 operator of a health care facility in which the principal
23 is a patient or resident;

1 (3) a parent, sibling, or descendant, or the spouse of
2 a parent, sibling, or descendant, of either the principal
3 or any agent or successor agent, regardless of whether the
4 relationship is by blood, marriage, or adoption;

5 (4) an agent or successor agent for health care.

6 (b) The prohibition on the operator of a health care
7 facility from serving as a witness shall extend to directors
8 and executive officers of an operator that is a corporate
9 entity but not other employees of the operator such as, but not
10 limited to, non-owner chaplains or social workers, nurses, and
11 other employees.

12 (Source: P.A. 98-1113, eff. 1-1-15.)

13 (755 ILCS 45/4-10) (from Ch. 110 1/2, par. 804-10)

14 Sec. 4-10. Statutory short form power of attorney for
15 health care.

16 (a) The form prescribed in this Section (sometimes also
17 referred to in this Act as the "statutory health care power")
18 may be used to grant an agent powers with respect to the
19 principal's own health care; but the statutory health care
20 power is not intended to be exclusive nor to cover delegation
21 of a parent's power to control the health care of a minor
22 child, and no provision of this Article shall be construed to
23 invalidate or bar use by the principal of any other or
24 different form of power of attorney for health care.
25 Nonstatutory health care powers must be executed by the

1 principal, designate the agent and the agent's powers, and
2 comply with the limitations in Section 4-5 of this Article, but
3 they need not be witnessed or conform in any other respect to
4 the statutory health care power.

5 No specific format is required for the statutory health
6 care power of attorney other than the notice must precede the
7 form. The statutory health care power may be included in or
8 combined with any other form of power of attorney governing
9 property or other matters.

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 advanced 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.

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

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

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

16 MY POWER OF ATTORNEY FOR HEALTH CARE

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

20 My name (Print your full name):

21 My address:

1 I WANT THE FOLLOWING PERSON TO BE MY HEALTH CARE AGENT
 2 (an agent is your personal representative under state and
 3 federal law):
 4 (Agent name)
 5 (Agent address)
 6 (Agent phone number)

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

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

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

16

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

18

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

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

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

1 (ii) Agreeing to admit me to or discharge me from any
2 hospital, home, or other institution, including a mental
3 health facility.

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

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

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

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

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

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

22 Make decisions for me only when I cannot make them for
23 myself. The physician(s) taking care of me will determine
24 when I lack this ability. Starting now, for the purpose of
25 assisting me with my health care plans and decisions, my

1 agent shall have complete access to my medical and mental
2 health records, the authority to share them with others as
3 needed, and the complete ability to communicate with my
4 personal physician(s) and other health care providers,
5 including the ability to require an opinion of my physician
6 as to whether I lack the ability to make decisions for
7 myself. OR

8 Make decisions for me starting now and continuing
9 after I am no longer able to make them for myself. While I
10 am still able to make my own decisions, I can still do so
11 if I want to.

12 The subject of life-sustaining treatment is of particular
13 importance. Life-sustaining treatments may include tube
14 feedings or fluids through a tube, breathing machines, and CPR.
15 In general, in making decisions concerning life-sustaining
16 treatment, your agent is instructed to consider the relief of
17 suffering, the quality as well as the possible extension of
18 your life, and your previously expressed wishes. Your agent
19 will weigh the burdens versus benefits of proposed treatments
20 in making decisions on your behalf.

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

1 SELECT ONLY ONE STATEMENT BELOW THAT BEST EXPRESSES YOUR WISHES
2 (optional):

3 The quality of my life is more important than the
4 length of my life. If I am unconscious and my attending
5 physician believes, in accordance with reasonable medical
6 standards, that I will not wake up or recover my ability to
7 think, communicate with my family and friends, and
8 experience my surroundings, I do not want treatments to
9 prolong my life or delay my death, but I do want treatment
10 or care to make me comfortable and to relieve me of pain.

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

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

17 The above grant of power is intended to be as broad as
18 possible so that your agent will have the authority to make any
19 decision you could make to obtain or terminate any type of
20 health care. If you wish to limit the scope of your agent's
21 powers or prescribe special rules or limit the power to
22 authorize autopsy or dispose of remains, you may do so
23 specifically in this form.

24

1
.....

2 My signature:

3 Today's date:

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

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

8 I saw the principal sign this document, or

9 the principal told me that the signature or mark on
10 the principal signature line is his or hers.

11 I am not the agent or successor agent(s) named in this
12 document. I am not related to the principal, the agent, or the
13 successor agent(s) by blood, marriage, or adoption. I am not
14 the principal's physician, advanced practice nurse, dentist,
15 podiatric physician, optometrist, psychologist ~~mental health~~
16 ~~service provider~~, or a relative of one of those individuals. I
17 am not an owner or operator (or the relative of an owner or
18 operator) of the health care facility where the principal is a
19 patient or resident.

20 Witness printed name:

21 Witness address:

22 Witness signature:

23 Today's date:

1 ~~SUCCESSOR HEALTH CARE AGENT(S) (optional):~~

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

7 ~~.....~~

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

9 ~~.....~~

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

11 (c) The statutory short form power of attorney for health
12 care (the "statutory health care power") authorizes the agent
13 to make any and all health care decisions on behalf of the
14 principal which the principal could make if present and under
15 no disability, subject to any limitations on the granted powers
16 that appear on the face of the form, to be exercised in such
17 manner as the agent deems consistent with the intent and
18 desires of the principal. The agent will be under no duty to
19 exercise granted powers or to assume control of or
20 responsibility for the principal's health care; but when
21 granted powers are exercised, the agent will be required to use
22 due care to act for the benefit of the principal in accordance
23 with the terms of the statutory health care power and will be
24 liable for negligent exercise. The agent may act in person or
25 through others reasonably employed by the agent for that

1 purpose but may not delegate authority to make health care
2 decisions. The agent may sign and deliver all instruments,
3 negotiate and enter into all agreements and do all other acts
4 reasonably necessary to implement the exercise of the powers
5 granted to the agent. Without limiting the generality of the
6 foregoing, the statutory health care power shall include the
7 following powers, subject to any limitations appearing on the
8 face of the form:

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

16 (2) The agent is authorized to admit the principal to
17 or discharge the principal from any and all types of
18 hospitals, institutions, homes, residential or nursing
19 facilities, treatment centers and other health care
20 institutions providing personal care or treatment for any
21 type of physical or mental condition. The agent shall have
22 the same right to visit the principal in the hospital or
23 other institution as is granted to a spouse or adult child
24 of the principal, any rule of the institution to the
25 contrary notwithstanding.

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

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

9 (4) At the principal's expense and subject to
10 reasonable rules of the health care provider to prevent
11 disruption of the principal's health care, the agent shall
12 have the same right the principal has to examine and copy
13 and consent to disclosure of all the principal's medical
14 records that the agent deems relevant to the exercise of
15 the agent's powers, whether the records relate to mental
16 health or any other medical condition and whether they are
17 in the possession of or maintained by any physician,
18 psychiatrist, psychologist, therapist, hospital, nursing
19 home or other health care provider. The authority under
20 this paragraph (4) applies to any information governed by
21 the Health Insurance Portability and Accountability Act of
22 1996 ("HIPAA") and regulations thereunder. The agent
23 serves as the principal's personal representative, as that
24 term is defined under HIPAA and regulations thereunder.

25 (5) The agent is authorized: to direct that an autopsy
26 be made pursuant to Section 2 of "An Act in relation to

1 autopsy of dead bodies", approved August 13, 1965,
2 including all amendments; to make a disposition of any part
3 or all of the principal's body pursuant to the Illinois
4 Anatomical Gift Act, as now or hereafter amended; and to
5 direct the disposition of the principal's remains.

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

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

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

20 (Source: P.A. 97-148, eff. 7-14-11; 98-1113, eff. 1-1-15.)

21 (755 ILCS 45/4-12) (from Ch. 110 1/2, par. 804-12)

22 Sec. 4-12. Saving clause. This Act does not in any way
23 invalidate any health care agency executed or any act of any
24 agent done, or affect any claim, right or remedy that accrued,
25 prior to September 22, 1987.

1 This amendatory Act of the 96th General Assembly does not
2 in any way invalidate any health care agency executed or any
3 act of any agent done, or affect any claim, right, or remedy
4 that accrued, prior to the effective date of this amendatory
5 Act of the 96th General Assembly.

6 This amendatory Act of the 98th General Assembly does not
7 in any way invalidate any health care agency executed or any
8 act of any agent done, or affect any claim, right, or remedy
9 that accrued, prior to the effective date of this amendatory
10 Act of the 98th General Assembly.

11 This amendatory Act of the 99th General Assembly does not
12 in any way invalidate any health care agency executed or any
13 act of any agent done, or affect any claim, right, or remedy
14 that accrued, prior to the effective date of this amendatory
15 Act of the 99th General Assembly.

16 (Source: P.A. 98-1113, eff. 1-1-15.)

17 Section 99. Effective date. This Act takes effect January
18 1, 2016.