



Sen. William R. Haine

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LRB099 03385 JLS 34264 a

1 AMENDMENT TO SENATE BILL 159

2 AMENDMENT NO. _____. Amend Senate Bill 159 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power of Attorney Act is amended
5 by changing Sections 4-5.1 and 4-10 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~~

1 ~~provider~~ of the principal, or a relative of the physician,
2 advanced practice nurse, physician assistant, dentist,
3 podiatric physician, optometrist, or psychologist ~~mental~~
4 ~~health service provider~~;

5 (2) an owner, operator, or relative of an owner or
6 operator of a health care facility in which the principal
7 is a patient or resident;

8 (3) a parent, sibling, or descendant, or the spouse of
9 a parent, sibling, or descendant, of either the principal
10 or any agent or successor agent, regardless of whether the
11 relationship is by blood, marriage, or adoption;

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

13 (b) The prohibition on the operator of a health care
14 facility from serving as a witness shall extend to directors
15 and executive officers of an operator that is a corporate
16 entity but not other employees of the operator such as, but not
17 limited to, non-owner chaplains or social workers, nurses, and
18 other employees.

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

20 (755 ILCS 45/4-10) (from Ch. 110 1/2, par. 804-10)

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

23 (a) The form prescribed in this Section (sometimes also
24 referred to in this Act as the "statutory health care power")
25 may be used to grant an agent powers with respect to the

1 principal's own health care; but the statutory health care
2 power is not intended to be exclusive nor to cover delegation
3 of a parent's power to control the health care of a minor
4 child, and no provision of this Article shall be construed to
5 invalidate or bar use by the principal of any other or
6 different form of power of attorney for health care.
7 Nonstatutory health care powers must be executed by the
8 principal, designate the agent and the agent's powers, and
9 comply with the limitations in Section 4-5 of this Article, but
10 they need not be witnessed or conform in any other respect to
11 the statutory health care power.

12 No specific format is required for the statutory health
13 care power of attorney other than the notice must precede the
14 form. The statutory health care power may be included in or
15 combined with any other form of power of attorney governing
16 property or other matters.

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

19 NOTICE TO THE INDIVIDUAL SIGNING

20 THE POWER OF ATTORNEY FOR HEALTH CARE

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

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

6 It is important to put your choice of agent in writing. The
7 written form is often called an "advance directive". You may
8 use this form or another form, as long as it meets the legal
9 requirements of Illinois. There are many written and on-line
10 resources to guide you and your loved ones in having a
11 conversation about these issues. You may find it helpful to
12 look at these resources while thinking about and discussing
13 your advance directive.

14 WHAT ARE THE THINGS I WANT MY

15 HEALTH CARE AGENT TO KNOW?

16 The selection of your agent should be considered carefully,
17 as your agent will have the ultimate decision making authority
18 once this document goes into effect, in most instances after
19 you are no longer able to make your own decisions. While the
20 goal is for your agent to make decisions in keeping with your
21 preferences and in the majority of circumstances that is what
22 happens, please know that the law does allow your agent to make
23 decisions to direct or refuse health care interventions or
24 withdraw treatment. Your agent will need to think about
25 conversations you have had, your personality, and how you

1 handled important health care issues in the past. Therefore, it
2 is important to talk with your agent and your family about such
3 things as:

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

5 (ii) How important is it to you to avoid pain and
6 suffering?

7 (iii) If you had to choose, is it more important to you
8 to live as long as possible, or to avoid prolonged
9 suffering or disability?

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

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

14 (vi) Do you wish to make a significant contribution to
15 medical science after your death through organ or whole
16 body donation?

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

25 WHAT KIND OF DECISIONS CAN MY AGENT MAKE?

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

5 (i) talk with physicians and other health care
6 providers about your condition.

7 (ii) see medical records and approve who else can see
8 them.

9 (iii) give permission for medical tests, medicines,
10 surgery, or other treatments.

11 (iv) choose where you receive care and which physicians
12 and others provide it.

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

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

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

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

4 Your agent is not automatically responsible for your health
5 care expenses.

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

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

15 (i) is at least 18 years old;

16 (ii) knows you well;

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

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

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

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

1 WHAT IF MY AGENT IS NOT AVAILABLE OR IS
2 UNWILLING TO MAKE DECISIONS FOR ME?

3 If the person who is your first choice is unable to carry
4 out this role, then the second agent you chose will make the
5 decisions; if your second agent is not available, then the
6 third agent you chose will make the decisions. The second and
7 third agents are called your successor agents and they function
8 as back-up agents to your first choice agent and may act only
9 one at a time and in the order you list them.

10 WHAT WILL HAPPEN IF I DO NOT
11 CHOOSE A HEALTH CARE AGENT?

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

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

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

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

24 (iii) Family members and friends may disagree with one

1 another about the best decisions.

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

5 WHAT IF THERE IS NO ONE AVAILABLE
6 WHOM I TRUST TO BE MY AGENT?

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

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

17 Follow these instructions after you have completed the
18 form:

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

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

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

23 (iv) Give a copy to your agent and to each of your
24 successor agents.

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

4 My name (Print your full name):

5 My address:

6 I WANT THE FOLLOWING PERSON TO BE MY HEALTH CARE AGENT
7 (an agent is your personal representative under state and
8 federal law):

9 (Agent name)

10 (Agent address)

11 (Agent phone number)

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

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

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

21

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

1

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

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

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

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

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

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

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

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

23 Make decisions for me only when I cannot make them for
24 myself. The physician(s) taking care of me will determine

1 when I lack this ability.

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

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

13 Make decisions for me starting now and continuing
14 after I am no longer able to make them for myself. While I
15 am still able to make my own decisions, I can still do so
16 if I want to, but want my agent to be consulted, if
17 available.

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

1 in making decisions on your behalf.

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

7 SELECT ONLY ONE STATEMENT BELOW THAT BEST EXPRESSES YOUR WISHES
8 (optional):

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

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

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

23 The above grant of power is intended to be as broad as
24 possible so that your agent will have the authority to make any

1 decision you could make to obtain or terminate any type of
2 health care. If you wish to limit the scope of your agent's
3 powers or prescribe special rules or limit the power to
4 authorize autopsy or dispose of remains, you may do so
5 specifically in this form.

6
7

8 My signature:.....

9 Today's date:.....

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

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

14 I saw the principal sign this document, or
15 the principal told me that the signature or mark on
16 the principal signature line is his or hers.

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

1 patient or resident.

2 Witness printed name:

3 Witness address:

4 Witness signature:

5 Today's date:

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

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

12

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

14

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

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

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

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

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

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

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

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

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

5 (5) The agent is authorized: to direct that an autopsy
6 be made pursuant to Section 2 of "An Act in relation to
7 autopsy of dead bodies", approved August 13, 1965,
8 including all amendments; to make a disposition of any part
9 or all of the principal's body pursuant to the Illinois
10 Anatomical Gift Act, as now or hereafter amended; and to
11 direct the disposition of the principal's remains.

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

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

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

1 decision maker for the principal.

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

3 Section 99. Effective date. This Act takes effect January
4 1, 2016.".