

House Bill 24

By: Representatives Tumlin of the 38<sup>th</sup>, Keown of the 173<sup>rd</sup>, Freeman of the 140<sup>th</sup>, Oliver of the 83<sup>rd</sup>, and Dempsey of the 13<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to  
2 provide for an advance directive for health care which combines provisions of a living will  
3 and a durable power of attorney for health care; to provide for legislative findings; to provide  
4 for a short title; to provide for definitions; to provide for a savings clause for a living will and  
5 a durable power of attorney for health care; to provide for a form; to provide for execution,  
6 use of a form or other forms, amendment, and witness requirements; to provide for  
7 revocation, the effect of marriage, and guardianship; to provide for duties and responsibilities  
8 of health care agents and health care providers; to provide for conditions precedent to  
9 carrying out health care treatment preferences and a physician's responsibilities; to provide  
10 for immunity; to provide for the effect of an advance directive for health care on criminal and  
11 insurance laws; to provide for penalties; to provide for the effect of Chapter 32 of Title 31  
12 on other legal rights and duties; to repeal and reserve Chapter 36 of Title 31, relating to a  
13 durable power of attorney for health care; to correct cross-references; to provide for related  
14 matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 style="text-align:center">**SECTION 1.**

17 (a) The General Assembly has long recognized the right of the individual to control all  
18 aspects of his or her personal care and medical treatment, including the right to insist upon  
19 medical treatment, decline medical treatment, or direct that medical treatment be withdrawn.  
20 In order to secure these rights, the General Assembly has adopted and amended statutes  
21 recognizing the living will and health care agency and provided statutory forms for both  
22 documents.

23 (b) The General Assembly has determined that the statutory forms for the living will and  
24 durable power of attorney for health care are confusing and inconsistent and that the statutes  
25 providing for the living will and health care agency contain conflicting concepts, inconsistent  
26 and out-of-date terminology, and confusing and inconsistent requirements for execution. In

1 addition, there is a commendable trend among the states to combine the concepts of the  
2 living will and health care agency into a single legal document.

3 (c) The General Assembly recognizes that a significant number of individuals representing  
4 the academic, medical, legislative, and legal communities, state officials, ethics scholars, and  
5 advocacy groups worked together to develop the advance directive for health care contained  
6 in this Act, and the collective intent was to create a form that is presented in understandable  
7 and everyday language so as to encourage and avail more citizens of this state to execute  
8 advance directives for health care.

9 (d) The General Assembly finds that the clear expression of an individual's decisions  
10 regarding health care, whether made by the individual or an agent appointed by the  
11 individual, is of critical importance not only to citizens but also to the health care and legal  
12 communities, third parties, and families. In furtherance of these purposes, the General  
13 Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the  
14 expression of decisions regarding health care and the appointment of a health care agent, as  
15 well as a form of advance directive for health care.

16 **SECTION 2.**

17 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising  
18 Chapter 32, relating to living wills, in its entirety as follows:

19 "CHAPTER 32

20 31-32-1. *Short title*

21 This chapter shall be known and may be cited as the 'Georgia Advance Directive for Health  
22 Care Act.'

23 31-32-2. *Definitions*

24 As used in this chapter, the term:

25 (1) 'Advance directive for health care' means a written document voluntarily executed  
26 by a declarant in accordance with the requirements of Code Section 31-32-5.

27 (2) 'Attending physician' means the physician who has been selected by or assigned to  
28 the declarant and who has assumed primary responsibility for the treatment and care of  
29 the declarant; provided, however, that if the physician selected by or assigned to the  
30 declarant to provide such treatment and care directs another physician to assume primary  
31 responsibility for such care and treatment, the physician who has been so directed shall,  
32 upon the physician's assumption of such responsibility, be the 'attending physician.'

1 (3) 'Declarant' means a person who has executed an advance directive for health care  
2 authorized by this chapter.

3 (4) 'Durable power of attorney for health care' means a written document voluntarily  
4 executed by an individual creating a health care agency in accordance with Chapter 36  
5 of this title, as such chapter existed on and before June 30, 2007.

6 (5) 'Health care' means any care, treatment, service, or procedure to maintain, diagnose,  
7 treat, or provide for a declarant's physical or mental health or personal care.

8 (6) 'Health care agent' means a person appointed by a declarant to act for and on behalf  
9 of the declarant to make decisions related to consent, refusal, or withdrawal of any type  
10 of health care and decisions related to autopsy, anatomical gifts, and disposition of a  
11 declarant's body when a declarant is unable or chooses not to make health care decisions  
12 for himself or herself. The term 'health care agent' shall include any back-up or successor  
13 agent appointed by the declarant.

14 (7) 'Health care facility' means a hospital, skilled nursing facility, hospice, institution,  
15 home, residential or nursing facility, treatment facility, and any other facility or service  
16 which has a valid permit or provisional permit issued under Chapter 7 of this title or  
17 which is licensed, accredited, or approved under the laws of any state, and includes  
18 hospitals operated by the United States government or by any state or subdivision thereof.

19 (8) 'Health care provider' means the attending physician and any other person  
20 administering health care to the declarant at the time of reference who is licensed,  
21 certified, or otherwise authorized or permitted by law to administer health care in the  
22 ordinary course of business or the practice of a profession, including any person  
23 employed by or acting for any such authorized person.

24 (9) 'Life-sustaining procedures' means medications, machines, or other medical  
25 procedures or interventions which, when applied to a declarant in a terminal condition or  
26 in a state of permanent unconsciousness, could in reasonable medical judgment keep the  
27 declarant alive but cannot cure the declarant and where, in the judgment of the attending  
28 physician and a second physician, death will occur without such procedures or  
29 interventions. The term 'life-sustaining procedures' shall not include the provision of  
30 nourishment or hydration but a declarant may direct the withholding or withdrawal of the  
31 provision of nourishment or hydration in an advance directive for health care. The term  
32 'life-sustaining procedures' shall not include the administration of medication to alleviate  
33 pain or the performance of any medical procedure deemed necessary to alleviate pain.

34 (10) 'Living will' means a written document voluntarily executed by an individual  
35 directing the withholding or withdrawal of life-sustaining procedures when an individual  
36 is in a terminal condition, coma, or persistent vegetative state in accordance with this  
37 chapter, as such chapter existed on and before June 30, 2007.

1 (11) 'Physician' means a person lawfully licensed in this state to practice medicine and  
 2 surgery pursuant to Article 2 of Chapter 34 of Title 43; and if the declarant is receiving  
 3 health care in another state, a person lawfully licensed in such state.

4 (12) 'Provision of nourishment or hydration' means the provision of nutrition or fluids  
 5 by tube or other medical means.

6 (13) 'State of permanent unconsciousness' means an incurable or irreversible condition  
 7 in which the declarant is not aware of himself or herself or his or her environment and in  
 8 which the declarant is showing no behavioral response to his or her environment.

9 (14) 'Terminal condition' means an incurable or irreversible condition which would result  
 10 in the declarant's death in a relatively short period of time.

11 31-32-3. *Savings clause*

12 The provisions of this chapter shall not apply to, affect, or invalidate a living will or  
 13 durable power of attorney for health care executed prior to July 1, 2007, to which the  
 14 provisions of former Chapter 32 or Chapter 36 of this title shall continue to apply, nor shall  
 15 it affect any claim, right, or remedy that accrued prior to July 1, 2007.

16 31-32-4. *Form*

17 "GEORGIA ADVANCE DIRECTIVE FOR HEALTH CARE

18 By: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
 19 (Print Name) (Month/Day/Year)

20 This advance directive for health care has four parts:

21 PART ONE HEALTH CARE AGENT. *This part allows you to choose someone to*  
 22 *make health care decisions for you when you cannot (or do not want to)*  
 23 *make health care decisions for yourself. The person you choose is*  
 24 *called a health care agent. You may also have your health care agent*  
 25 *make decisions for you after your death with respect to an autopsy,*  
 26 *organ donation, body donation, and disposition of your body. You*  
 27 *should talk to your health care agent about this important role.*

1 PART TWO HEALTH CARE TREATMENT PREFERENCES. *This part allows*  
2 *you to state your health care treatment preferences if you have a*  
3 *terminal condition or if you are in a state of permanent*  
4 *unconsciousness. PART TWO will become effective only if you are*  
5 *unable to communicate your health care treatment preferences.*  
6 *Reasonable and appropriate efforts will be made to communicate with*  
7 *you about your health care treatment preferences before PART TWO*  
8 *becomes effective. You should talk to your family and others close to*  
*you about your treatment preferences.*

9 PART THREE GUARDIANSHIP. *This part allows you to nominate a person to be*  
10 *your guardian should one ever be needed.*

11 PART FOUR EFFECTIVENESS AND SIGNATURES. *This part requires your*  
12 *signature and the signatures of two witnesses. You must complete*  
13 *PART FOUR if you have filled out any other part of this form.*

14 *You may fill out any or all of the first three parts listed above. You must fill out PART FOUR*  
15 *of this form in order for this form to be effective.*

16 *You should give a copy of this completed form to people who might need it, such as your*  
17 *health care agent, your family, and your physician. Keep a copy of this completed form at*  
18 *home in a place where it can easily be found if it is needed. Review this completed form*  
19 *periodically to make sure it still reflects your preferences. If your preferences change,*  
20 *complete a new advance directive for health care.*

21 *Using this form of advance directive for health care is completely optional. Other forms of*  
22 *advance directives for health care or health care proxies may be used in Georgia.*

23 *You may revoke this completed form at any time. This completed form will replace any*  
24 *advance directive for health care, durable power of attorney for health care, health care*  
25 *proxy, or living will that you have completed before completing this form.*

PART ONE: HEALTH CARE AGENT

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*[PART ONE will be effective even if PART TWO is not completed. A physician or health care provider who is directly involved in your health care may not serve as your health care agent. If you are married, a future divorce or annulment of your marriage will revoke the selection of your current spouse as your health care agent. If you are not married, a future marriage will revoke the selection of your health care agent unless the person you selected as your health care agent is your new spouse.]*

**(1) HEALTH CARE AGENT**

I select the following person as my health care agent to make health care decisions for me:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Numbers: \_\_\_\_\_  
(Home, Work, and Mobile)

**(2) BACK-UP HEALTH CARE AGENT**

*[This section is optional. PART ONE will be effective even if this section is left blank.]*

If my health care agent cannot be contacted in a reasonable time period and cannot be located with reasonable efforts or for any reason my health care agent is unavailable or unable or unwilling to act as my health care agent, then I select the following, each to act successively in the order named, as my back-up health care agent(s):

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Numbers: \_\_\_\_\_  
(Home, Work, and Mobile)

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone Numbers: \_\_\_\_\_  
(Home, Work, and Mobile)

1 **(3) GENERAL POWERS OF HEALTH CARE AGENT**

2 My health care agent will make health care decisions for me when I am unable to  
3 communicate my health care decisions or I choose to have my health care agent  
4 communicate my health care decisions.

5 My health care agent will have the same authority to make any health care decision that I  
6 could make. My health care agent's authority includes, for example, the power to:

- 7 • Admit me to or discharge me from any hospital, skilled nursing facility, hospice, or  
8 other health care facility or service;
- 9 • Request, consent to, withhold, or withdraw any type of health care; and
- 10 • Contract for any health care facility or service for me, and to obligate me to pay for  
11 these services (but my health care agent will not be financially liable for any services  
12 or care contracted for me or on my behalf).

13 My health care agent will be my personal representative for all purposes of federal or  
14 state law related to privacy of medical records and will have the same access to my  
15 medical records that I have and can disclose the contents of my medical records to others  
16 for my ongoing health care.

17 My health care agent may present a copy of the original form in lieu of the original form  
18 and the copy will have the same meaning and effect as the original.

19 I understand that under Georgia law:

- 20 • My health care agent may refuse to act as my health care agent;
- 21 • A court can take away the powers of my health care agent if it finds that my health  
22 care agent is not acting properly; and
- 23 • My health care agent does not have the power to make health care decisions for me  
24 regarding psychosurgery, sterilization, or treatment or involuntary hospitalization for  
25 mental or emotional illness, mental retardation, or addictive disease.

26 **(4) GUIDANCE FOR HEALTH CARE AGENT**

27 When making health care decisions for me, my health care agent should think about what  
28 action would be consistent with past conversations we have had, my treatment preferences  
29 as expressed in PART TWO (if I have filled out PART TWO), my religious and other  
30 beliefs and values, and how I have handled medical and other important issues in the past.  
31 If what I would decide is still unclear, then my health care agent should make decisions for

1 me that my health care agent believes are in my best interest, considering the benefits,  
2 burdens, and risks of my current circumstances and treatment options.

3 **(5) POWERS OF HEALTH CARE AGENT AFTER DEATH**

4 (A) AUTOPSY

5 My health care agent will have the power to authorize an autopsy of my body unless I  
6 have limited my health care agent’s power by initialing below.

7 \_\_\_\_\_ (Initials) My health care agent will not have the power to authorize an  
8 autopsy of my body (unless an autopsy is required by law).

9 (B) ORGAN DONATION AND DONATION OF BODY

10 My health care agent will have the power to make a disposition of any part or all of my  
11 body for medical purposes pursuant to the Georgia Anatomical Gift Act, unless I have  
12 limited my health care agent’s power by initialing below.

13 *[Initial each statement that you want to apply.]*

14 \_\_\_\_\_ (Initials) My health care agent will not have the power to make a  
15 disposition of my body for use in a medical study program.

16 \_\_\_\_\_ (Initials) My health care agent will not have the power to donate any of my  
17 organs.

18 (C) DISPOSITION OF BODY

19 My health care agent will have the power to make decisions about the disposition of my  
20 body unless I have initialed below.

21 \_\_\_\_\_ (Initials) I want the following person to make decisions about the  
22 disposition of my body:

23 Name: \_\_\_\_\_

24 Address: \_\_\_\_\_

25 Telephone Numbers: \_\_\_\_\_

26 (Home, Work, and Mobile)

27 I wish to for my body to be:

28 \_\_\_\_\_ (Initials) Buried

29 OR

30 \_\_\_\_\_ (Initials) Cremated



**PART TWO: TREATMENT PREFERENCES**

1 *[PART TWO will be effective only if you are unable to communicate your treatment*  
 2 *preferences after reasonable and appropriate efforts have been made to communicate with*  
 3 *you about your treatment preferences. PART TWO will be effective even if PART ONE is not*  
 4 *completed. If you have not selected a health care agent in PART ONE, or if your health care*  
 5 *agent is not available, then PART TWO will provide your physician and other health care*  
 6 *providers with your treatment preferences. If you have selected a health care agent in PART*  
 7 *ONE, then your health care agent will have the authority to make all health care decisions*  
 8 *for you regarding matters covered by PART TWO. Your health care agent will be guided by*  
 9 *your treatment preferences and other factors discussed in PART ONE, Section (4).]*

10 **(6) CONDITIONS**

11 PART TWO will be effective if I am in any of the following conditions:

12 *[Initial each condition in which you want PART TWO to be effective.]*

13 \_\_\_\_\_ (Initials) If I have a terminal condition, which means I have an incurable or  
 14 irreversible condition that will result in my death in a relatively short period of time.

15 \_\_\_\_\_ (Initials) If I am in a state of permanent unconsciousness, which means I am  
 16 in an incurable or irreversible condition in which I am not aware of myself or my  
 17 environment and I show no response to my environment.

18 My condition will be determined in writing after personal examination by my attending  
 19 physician and a second physician in accordance with currently accepted medical standards.

20 **(7) TREATMENT PREFERENCES**

21 *[State your treatment preference by initialing (A), (B), or (C). If you choose (C), state your*  
 22 *additional treatment preferences by initialing one or more of the statements following (C).*  
 23 *You may provide additional instructions about your treatment preferences in the next section.*  
 24 *You will be provided with comfort care, including pain relief, but you may also want to state*  
 25 *your specific preferences regarding pain relief in the next section.]*

1 If I am in any condition that I initialed in Section (6) above and I can no longer  
 2 communicate my treatment preferences after reasonable and appropriate efforts have been  
 3 made to communicate with me about my treatment preferences, then:

4 (A) \_\_\_\_\_ (Initials) Try to extend my life for as long as possible, using all  
 5 medications, machines, or other medical procedures that in reasonable medical judgment  
 6 could keep me alive. If I am unable to take nutrition or fluids by mouth, then I want to  
 7 receive nutrition or fluids by tube or other medical means.

8 OR

9 (B) \_\_\_\_\_ (Initials) Allow my natural death to occur. I do not want any  
 10 medications, machines, or other medical procedures that in reasonable medical  
 11 judgment could keep me alive but cannot cure me. I do not want to receive nutrition  
 12 or fluids by tube or other medical means except as needed to provide pain medication.

13 OR

14 (C) \_\_\_\_\_ (Initials) I do not want any medications, machines, or other medical  
 15 procedures that in reasonable medical judgment could keep me alive but cannot cure  
 16 me, except as follows:

17 *[Initial each statement that you want to apply to option (C).]*

18 \_\_\_\_\_ (Initials) If I am unable to take nutrition by mouth, I want to receive  
 19 nutrition by tube or other medical means.

20 \_\_\_\_\_ (Initials) If I am unable to take fluids by mouth, I want to receive fluids  
 21 by tube or other medical means.

22 \_\_\_\_\_ (Initials) If I need assistance to breathe, I want to have a ventilator used.

23 \_\_\_\_\_ (Initials) If my heart or pulse has stopped, I want to have cardiopulmonary  
 24 resuscitation (CPR) used.

25 **(8) ADDITIONAL STATEMENTS**

26 *[This section is optional. PART TWO will be effective even if this section is left blank. This*  
 27 *section allows you to state additional treatment preferences, to provide additional guidance*  
 28 *to your health care agent (if you have selected a health care agent in PART ONE), or to*  
 29 *provide information about your personal and religious values about your medical treatment.*  
 30 *For example, you may want to state your treatment preferences regarding medications to*  
 31 *fight infection, surgery or amputation, blood transfusion, or kidney dialysis. Understanding*  
 32 *that you cannot foresee everything that could happen to you after you can no longer*  
 33 *communicate your treatment preferences, you may want to provide guidance to your health*

1 care agent (if you have selected a health care agent in PART ONE) about following your  
2 treatment preferences. You may want to state your specific preferences regarding pain  
3 relief.]

4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_

7 **(9) IN CASE OF PREGNANCY**

8 *[PART TWO will be effective even if this section is left blank.]*

9 I understand that under Georgia law, PART TWO generally will have no force and effect  
10 if I am pregnant unless the fetus is not viable and I indicate by initialing below that I want  
11 PART TWO to be carried out.

12 \_\_\_\_\_ (Initials) I want PART TWO to be carried out if my fetus is not viable.

PART THREE: GUARDIANSHIP

13 **(10) GUARDIANSHIP**

14 *[PART THREE is optional. This form will be effective even if this part is left blank.*

15 *If you wish to nominate a person to be your guardian in the event a court decides that a*  
16 *guardian should be appointed, complete this part. A court will appoint the person nominated*  
17 *by you if the court finds that you are not able to make significant responsible decisions for*  
18 *yourself regarding your personal support, safety, or welfare. A court will appoint the person*  
19 *nominated by you if the court finds that the appointment will serve your best interest and*  
20 *welfare. If you have selected a health care agent in PART ONE, you may (but are not*  
21 *required to) nominate the same person to be your guardian. If your health care agent and*  
22 *guardian are not the same person, your health care agent will have priority over your*  
23 *guardian in making your health care decisions, unless a court determines otherwise.]*

24 *[State your preference by initialing (A) or (B). Choose (A) only if you have also completed*  
25 *PART ONE.]*

26 (A) \_\_\_\_\_ (Initials) I nominate the person serving as my health care agent  
27 under PART ONE to serve as my guardian.

28 OR

29 (B) \_\_\_\_\_ (Initials) I nominate the following person to serve as my guardian:

1 Name: \_\_\_\_\_

2 Address: \_\_\_\_\_

3 Telephone Numbers: \_\_\_\_\_

4 (Home, Work, and Mobile)

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PART FOUR: EFFECTIVENESS AND SIGNATURES
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6 **EFFECTIVENESS**

7 This advance directive for health care will become effective only if I am unable or  
8 choose not to make or communicate my own health care decisions.

9 Unless I state otherwise by initialing below and providing alternative future dates or  
10 events, this advance directive for health care will become effective at the time I sign it  
11 and will remain effective until my death (and after my death to the extent authorized  
12 in Section (5)).

13 \_\_\_\_\_ (Initials) This advance directive for health care will become effective on  
14 or upon \_\_\_\_\_ and will terminate on or upon \_\_\_\_\_.

15 **SIGNATURES**

16 *[You must sign and date or acknowledge signing and dating this form in the presence of two*  
17 *witnesses.*

18 *Both witnesses must be of sound mind and must be at least 18 years of age, but the witnesses*  
19 *do not have to be together or present with you when you sign this form.*

20 *A witness:*

- 21 • *Cannot be a person who was selected to be your health care agent or back-up health*
- 22 *care agent in PART ONE;*
- 23 • *Cannot be a person who will knowingly inherit anything from you or otherwise*
- 24 *knowingly gain a financial benefit from your death; or*
- 25 • *Cannot be a person who is directly involved in your health care.*

26 *Only one of the witnesses may be an employee, agent, or medical staff member of the*  
27 *hospital, skilled nursing facility, hospice, or other health care facility in which you are*  
28 *receiving health care (but this witness cannot be directly involved in your health care).]*

1 I understand that this form replaces any advance directive for health care, durable power of  
2 attorney for health care, health care proxy, or living will that I have completed before this  
3 date.

4 By signing below, I state that I am emotionally and mentally capable of making this advance  
5 directive for health care and that I understand its purpose and effect.

6 \_\_\_\_\_  
7 (Signature of Declarant) (Date)

8 The declarant signed this form in my presence or acknowledged signing this form to me.  
9 Based upon my personal observation, the declarant appeared to be emotionally and mentally  
10 capable of making this advance directive for health care and signed this form willingly and  
11 voluntarily.

12 \_\_\_\_\_  
13 (Signature of First Witness) (Date)

14 Print Name: \_\_\_\_\_

15 Address: \_\_\_\_\_

16 \_\_\_\_\_  
17 (Signature of Second Witness) (Date)

18 Print Name: \_\_\_\_\_

19 Address: \_\_\_\_\_

20 *[This form does not need to be notarized.]'*

21 31-32-5. *Execution, use of form or other forms, witnesses*

22 (a) Any person of sound mind who is emancipated or 18 years of age or older may execute  
23 a document which:

24 (1) Directs the withholding or withdrawal of life-sustaining procedures or the  
25 withholding or withdrawal of the provision of nourishment or hydration when the  
26 declarant is in a terminal condition or state of permanent unconsciousness;

27 (2) Appoints a health care agent; or

28 (3) Covers matters contained in both paragraphs (1) and (2) of this subsection.

29 Such document shall be in writing, signed by the declarant or by some other person in the  
30 declarant's presence and at the declarant's express direction, and witnessed in accordance  
31 with the provisions of subsection (c) of this Code section.

1 (b) When a document substantially complying with Code Section 31-32-4 is used, it shall  
 2 be treated as an advance directive for health care which complies with this Code section.  
 3 No provision of this chapter shall be construed to bar a declarant from using any other form  
 4 of advance directive for health care which complies with this Code section. A document  
 5 which was executed in another state and is valid under the laws of the state where executed  
 6 shall be treated as an advance directive for health care which complies with this Code  
 7 section.

8 (c)(1) An advance directive for health care shall be attested and subscribed in the  
 9 presence of the declarant by two witnesses who are of sound mind and at least 18 years  
 10 of age, but such witnesses do not have to be together or present when the declarant signs  
 11 the advance directive for health care.

12 (2) Neither witness can be a person who:

13 (A) Was selected to serve as the declarant's health care agent;

14 (B) Will knowingly inherit anything from the declarant or otherwise knowingly gain  
 15 a financial benefit from the declarant's death; or

16 (C) Is directly involved in the declarant's health care.

17 (3) Not more than one of the witnesses may be an employee, agent, or medical staff  
 18 member of the health care facility in which the declarant is receiving health care but such  
 19 witness cannot be directly involved in the declarant's health care.

20 (d) A physician or health care provider who is directly involved in the declarant's health  
 21 care may not serve as the declarant's health care agent.

22 (e) A copy of an advance directive for health care executed in accordance with this Code  
 23 section shall be valid and have the same meaning and effect as the original document.

24 (f) An advance directive for health care may be amended at any time by a written  
 25 amendment executed in accordance with the provisions of subsection (c) of this Code  
 26 section.

27 *31-32-6. Revocation; effect of marriage; guardianship*

28 (a) An advance directive for health care may be revoked at any time by the declarant,  
 29 without regard to the declarant's mental state or competency, by any of the following  
 30 methods:

31 (1) By completing a new advance directive for health care that has provisions which are  
 32 inconsistent with the provisions of a previously executed advance directive for health  
 33 care, living will, or durable power of attorney for health care; provided, however, that  
 34 such revocation shall extend only so far as the inconsistency exists between the document  
 35 and any part of a prior document that is not inconsistent with a subsequent document  
 36 which shall remain unrevoked;

1 (2) By being obliterated, burned, torn, or otherwise destroyed by the declarant or by  
2 some person in the declarant's presence and at the declarant's direction indicating an  
3 intention to revoke;

4 (3) By a written revocation clearly expressing the intent of the declarant to revoke the  
5 advance directive for health care signed and dated by the declarant or by a person acting  
6 at the declarant's direction. If the declarant is receiving health care in a health care  
7 facility, revocation of an advance directive for health care will become effective only  
8 upon communication to the attending physician by the declarant or by a person acting at  
9 the declarant's direction. The attending physician shall record in the declarant's medical  
10 record the time and date when the attending physician received notification of the written  
11 revocation; or

12 (4) By an oral or any other clear expression of the intent to revoke the advance directive  
13 for health care in the presence of a witness 18 years of age or older who, within 30 days  
14 of the expression of such intent, signs and dates a writing confirming that such expression  
15 of intent was made. If the declarant is receiving health care in a health care facility,  
16 revocation of an advance directive for health care will become effective only upon  
17 communication to the attending physician by the declarant or by a person acting at the  
18 declarant's direction. The attending physician shall record in the declarant's medical  
19 record the time, date, and place of the revocation and the time, date, and place, if  
20 different, when the attending physician received notification of the revocation. Any  
21 person, other than the health care agent, to whom an oral or other nonwritten revocation  
22 of an advance directive for health care is communicated or delivered shall make all  
23 reasonable efforts to inform the health care agent of that fact as promptly as possible.

24 (b) Unless an advance directive for health care expressly provides otherwise, if after  
25 executing an advance directive for health care, the declarant marries, such marriage shall  
26 revoke the designation of a person other than the declarant's spouse as the declarant's  
27 health care agent, and if, after executing an advance directive for health care, the  
28 declarant's marriage is dissolved or annulled, such dissolution or annulment shall revoke  
29 the designation of the declarant's former spouse as the declarant's health care agent.

30 (c) An advance directive for health care which survives disability, incapacity, or  
31 incompetency shall not be revoked solely by the appointment of a guardian or receiver for  
32 the declarant. Absent an order of the probate court or superior court having jurisdiction  
33 directing a guardian of the person to exercise the powers of the declarant under an advance  
34 directive for health care that survives disability, incapacity, or incompetency, the guardian  
35 of the person has no power, duty, or liability with respect to any health care matters  
36 covered by the advance directive for health care; provided, however, that no order usurping  
37 the authority of a health care agent known to the proposed guardian shall be entered unless

1 notice is sent by first-class mail to the health care agent's last known address and it is  
2 shown by clear and convincing evidence that the health care agent is acting in a manner  
3 inconsistent with the power of attorney.

4 *31-32-7. Duties and responsibilities of health care agents*

5 (a) A health care agent shall not have the authority to make a particular health care  
6 decision different from or contrary to the declarant's decision, if any, if the declarant is able  
7 to understand the general nature of the health care procedure being consented to or refused,  
8 as determined by the declarant's attending physician based on such physician's good faith  
9 judgment.

10 (b) A health care agent shall be under no duty to exercise granted powers or to assume  
11 control of or responsibility for the declarant's health care; provided, however, that when  
12 granted powers are exercised, the health care agent shall use due care to act for the benefit  
13 of the declarant in accordance with the terms of the advance directive for health care and  
14 shall be liable for negligent exercise. A health care agent's actions and decisions shall be  
15 consistent with the intentions and desires of the declarant. If a declarant's intentions and  
16 desires are unclear, the health care agent shall act in the declarant's best interest  
17 considering the benefits, burdens, and risks of the declarant's circumstances and treatment  
18 options.

19 (c) A health care agent may act in person or through others reasonably employed by the  
20 health care agent for that purpose but may not delegate authority to make health care  
21 decisions.

22 (d) A health care agent may sign and deliver all instruments, negotiate and enter into all  
23 agreements, and do all other acts reasonably necessary to implement the exercise of the  
24 powers granted to the health care agent.

25 (e) The form of advance directive for health care contained in Code Section 31-32-4 shall,  
26 and any different form of advance directive for health care may, include the following  
27 powers, subject to any limitations appearing on the face of the form:

28 (1) The health care agent is authorized to consent to and authorize or refuse, or to  
29 withhold or withdraw consent to, any and all types of medical care, treatment, or  
30 procedures relating to the physical or mental health of the declarant, including any  
31 medication program, surgical procedures, life-sustaining procedures, or provision of  
32 nourishment or hydration for the declarant, but not including psychosurgery, sterilization,  
33 or involuntary hospitalization or treatment covered by Title 37;

34 (2) The health care agent is authorized to admit the declarant to or discharge the  
35 declarant from any health care facility;



1 (3) The health care agent is authorized to contract for any health care facility or service  
 2 in the name of and on behalf of the declarant and to bind the declarant to pay for all such  
 3 services, and the health care agent shall not be personally liable for any services or care  
 4 contracted for or on behalf of the declarant;

5 (4) At the declarant's expense and subject to reasonable rules of the health care provider  
 6 to prevent disruption of the declarant's health care, the health care agent shall have the  
 7 same right the declarant has to examine and copy and consent to disclosure of all the  
 8 declarant's medical records that the health care agent deems relevant to the exercise of  
 9 the agent's powers, whether the records relate to mental health or any other medical  
 10 condition and whether they are in the possession of or maintained by any physician,  
 11 psychiatrist, psychologist, therapist, health care facility, or other health care provider,  
 12 notwithstanding the provisions of any statute or other rule of law to the contrary; and

13 (5) Unless otherwise provided, the health care agent is authorized to direct that an  
 14 autopsy of the declarant's body be made; to make a disposition of any part or all of the  
 15 declarant's body pursuant to Article 6 of Chapter 5 of Title 44, the 'Georgia Anatomical  
 16 Gift Act'; and to direct the disposition of the declarant's body, including funeral  
 17 arrangements, burial, or interment.

18 (f) A court may remove a health care agent if it finds that the health care agent is not  
 19 acting properly.

20 31-32-8. *Duties and responsibilities of health care providers*

21 Each health care provider and each other person with whom a health care agent interacts  
 22 under an advance directive for health care shall be subject to the following duties and  
 23 responsibilities:

24 (1) It is the responsibility of the health care agent or declarant to notify the health care  
 25 provider of the existence of the advance directive for health care and any amendment or  
 26 revocation thereof. A health care provider furnished with a copy of an advance directive  
 27 for health care shall make such copy a part of the declarant's medical records and shall  
 28 enter in the records any change in or termination of the advance directive for health care  
 29 by the declarant that becomes known to the health care provider. Whenever a health care  
 30 provider believes a declarant is unable to understand the general nature of the health care  
 31 procedure which the provider deems necessary, the health care provider shall consult with  
 32 any available health care agent known to the health care provider who then has power to  
 33 act for the declarant under an advance directive for health care;

34 (2) A health care decision made by a health care agent in accordance with the terms of an  
 35 advance directive for health care shall be complied with by every health care provider to  
 36 whom the decision is communicated, subject to the health care provider's right to

1 administer treatment for the declarant's comfort or alleviation of pain; provided, however,  
 2 that if the health care provider is unwilling to comply with the health care agent's  
 3 decision, the health care provider shall promptly inform the health care agent who shall  
 4 then be responsible for arranging for the declarant's transfer to another health care  
 5 provider. A health care provider who is unwilling to comply with the health care agent's  
 6 decision shall provide reasonably necessary consultation and care in connection with the  
 7 pending transfer;

8 (3) At the declarant's expense and subject to reasonable rules of the health care provider  
 9 to prevent disruption of the declarant's health care, each health care provider shall give  
 10 a health care agent authorized to receive such information under an advance directive for  
 11 health care the same right the declarant has to examine and copy any part or all of the  
 12 declarant's medical records that the health care agent deems relevant to the exercise of  
 13 the health care agent's powers, whether the records relate to mental health or any other  
 14 medical condition and whether they are in the possession of or maintained by any  
 15 physician, psychiatrist, psychologist, therapist, health care facility, or other health care  
 16 provider, notwithstanding the provisions of any statute or rule of law to the contrary; and

17 (4) If and to the extent an advance directive for health care empowers the health care  
 18 agent to:

19 (A) Make an anatomical gift on behalf of the declarant under Article 6 of Chapter 5 of  
 20 Title 44, the 'Georgia Anatomical Gift Act';

21 (B) Authorize an autopsy of the declarant's body; or

22 (C) Direct the disposition of the declarant's body,

23 the anatomical gift, autopsy approval, or body disposition shall be deemed the act of the  
 24 declarant or of the person who has priority under law to make the necessary decisions,  
 25 and each person to whom a direction by the health care agent in accordance with the  
 26 terms of the agency is communicated shall comply with such direction to the extent it is  
 27 in accord with reasonable medical standards or other relevant standards at the time of  
 28 reference.

29 31-32-9. *Conditions precedent to carrying out treatment preferences; physician's failure*  
 30 *to comply with treatment preferences*

31 (a) Prior to effecting a withholding or withdrawal of life-sustaining procedures or the  
 32 withholding or withdrawal of the provision of nourishment or hydration from a declarant  
 33 pursuant to an advance directive for health care, the attending physician:

34 (1) Shall determine that, to the best of that attending physician's knowledge, the  
 35 declarant is not pregnant, or if she is, that the fetus is not viable and that the declarant's  
 36 directions regarding the withholding or withdrawal of life-sustaining procedures or the

1 withholding or withdrawal of the provision of nourishment or hydration specifically  
2 indicates that the advance directive for health care is to be carried out;

3 (2) Shall, without delay after the diagnosis of a terminal condition or state of permanent  
4 unconsciousness of the declarant, take the necessary steps to provide for the written  
5 certification of the declarant's terminal condition or state of permanent unconsciousness  
6 in accordance with the procedure set forth in subsection (b) of this Code section;

7 (3) Shall make a reasonable effort to determine that the advance directive for health care  
8 complies with subsection (c) of Code Section 31-32-5; and

9 (4) Shall make the advance directive for health care and the written certification of the  
10 terminal condition or state of permanent unconsciousness a part of the declarant patient's  
11 medical records.

12 (b) The procedure for establishing a terminal condition or state of permanent  
13 unconsciousness is as follows: two physicians, one of whom shall be the attending  
14 physician, who, after personally examining the declarant, shall certify in writing, based upon  
15 conditions found during the course of their examination and in accordance with currently  
16 accepted medical standards, that the declarant is in a terminal condition or state of  
17 permanent unconsciousness.

18 (c) The advance directive for health care shall be presumed, unless revoked, to be the  
19 directions of the declarant regarding the withholding or withdrawal of life-sustaining  
20 procedures or the withholding or withdrawal of the provision of nourishment or hydration.

21 (d) The attending physician who fails or refuses to comply with the declarant's directions  
22 regarding the withholding or withdrawal of life-sustaining procedures or the withholding  
23 or withdrawal of the provision of nourishment or hydration shall endeavor to advise  
24 promptly the health care agent, if one is appointed, and, otherwise, next of kin or legal  
25 guardian of the declarant that such physician is unwilling to effectuate such directions. The  
26 attending physician shall thereafter at the election of the health care agent, if one is  
27 appointed, and, otherwise, next of kin or legal guardian of the declarant:

28 (1) Make a good faith attempt to effect the transfer of the declarant to another physician  
29 who will effectuate the declarant's directions regarding the withholding or withdrawal of  
30 life-sustaining procedures or the withholding or withdrawal of the provision of  
31 nourishment or hydration; or

32 (2) Permit the health care agent, if one is appointed, and, otherwise, next of kin or legal  
33 guardian of the declarant to obtain another physician who will effectuate the declarant's  
34 directions regarding the withholding or withdrawal of life-sustaining procedures or the  
35 withholding or withdrawal of the provision of nourishment or hydration.

1 31-32-10. *Immunity*

2 (a) Each health care provider and any other person who acts in good faith reliance on any  
3 direction or decision by the health care agent that is not clearly contrary to the terms of an  
4 advance directive for health care shall be protected and released to the same extent as  
5 though such person had interacted directly with the declarant as a fully competent person.  
6 Without limiting the generality of the foregoing, the following specific provisions shall also  
7 govern, protect, and validate the acts of the health care agent and each such health care  
8 provider and any other person acting in good faith reliance on such direction or decision:

9 (1) No such health care provider or person shall be subject to civil or criminal liability or  
10 discipline for unprofessional conduct solely for complying with any direction or decision  
11 by the health care agent, even if death or injury to the declarant ensues;

12 (2) No such health care provider or person shall be subject to civil or criminal liability or  
13 discipline for unprofessional conduct solely for failure to comply with any direction or  
14 decision by the health care agent, as long as such health care provider or person promptly  
15 informs the health care agent of such health care provider's or person's refusal or failure  
16 to comply with such direction or decision by the health care agent. The health care agent  
17 shall then be responsible for arranging the declarant's transfer to another health care  
18 provider. A health care provider who is unwilling to comply with the health care agent's  
19 decision shall continue to provide reasonably necessary consultation and care in  
20 connection with the pending transfer;

21 (3) If the actions of a health care provider or person who fails to comply with any  
22 direction or decision by the health care agent are substantially in accord with reasonable  
23 medical standards at the time of reference and the provider cooperates in the transfer of  
24 the declarant pursuant to paragraph (2) of Code Section 31-32-8, the health care provider  
25 or person shall not be subject to civil or criminal liability or discipline for unprofessional  
26 conduct for failure to comply with the advance directive for health care;

27 (4) No health care agent who, in good faith, acts with due care for the benefit of the  
28 declarant and in accordance with the terms of an advance directive for health care, or who  
29 fails to act, shall be subject to civil or criminal liability for such action or inaction; and

30 (5) If the authority granted by an advance directive for health care is revoked under Code  
31 Section 31-32-6, a person shall not be subject to criminal prosecution or civil liability for  
32 acting in good faith reliance upon such advance directive for health care unless such  
33 person had actual knowledge of the revocation.

34 (b) No person shall be civilly liable for failing or refusing in good faith to effectuate the  
35 declarant's directions regarding the withholding or withdrawal of life-sustaining procedures  
36 or the withholding or withdrawal of the provision of nourishment or hydration.

1 (c) No physician or any person acting under a physician's direction and no health care  
2 facility or any agent or employee thereof who, acting in good faith in accordance with the  
3 requirements of this chapter, causes the withholding or withdrawal of life-sustaining  
4 procedures or the withholding or withdrawal of the provision of nourishment or hydration  
5 from a declarant or who otherwise participates in good faith therein shall be subject to any  
6 civil or criminal liability or guilty of unprofessional conduct therefor.

7 (d) No person who witnesses and attests an advance directive for health care in good faith  
8 and in accordance with subsection (c) of Code Section 31-32-5 shall be civilly or criminally  
9 liable or guilty of unprofessional conduct for such action.

10 (e) Any person who participates in the withholding or withdrawal of life-sustaining  
11 procedures or the withholding or withdrawal of the provision of nourishment or hydration  
12 pursuant to an advance directive for health care and who has actual knowledge that such  
13 advance directive for health care has been properly revoked shall not have any civil or  
14 criminal immunity otherwise granted under this chapter for such conduct.

15 31-32-11. *Advance directive for health care's relationship to criminal and insurance laws*

16 (a) The making of an advance directive for health care containing a declarant's directions  
17 regarding the withholding or withdrawal of life-sustaining procedures or the withholding  
18 or withdrawal of the provision of nourishment or hydration, shall not, for any purpose,  
19 constitute a suicide. If the declarant's death results from the withholding or withdrawal of  
20 life-sustaining procedures or the withholding or withdrawal of the provision of nourishment  
21 or hydration in accordance with the terms of an advance directive for health care, the death  
22 shall not constitute a suicide or homicide for any purpose under any statute or other rule of  
23 law.

24 (b) The making of an advance directive for health care shall not restrict, inhibit, or impair  
25 in any manner the sale, procurement, issuance, or enforceability of any policy of life  
26 insurance, annuity, or other contract that is conditioned on the life or death of the declarant  
27 nor shall it be deemed to modify the terms of an existing policy of life insurance, annuity,  
28 or other contract that is conditioned on the life or death of the declarant, notwithstanding  
29 any term of the policy to the contrary. No policy of life insurance, annuity, or other contract  
30 that is conditioned on the life or death of the declarant shall be legally impaired or  
31 invalidated in any manner by the making of an advance directive for health care pursuant  
32 to this chapter or by the withholding or withdrawal of life-sustaining procedures or the  
33 withholding or withdrawal of the provision of nourishment or hydration from an insured  
34 declarant, nor shall the making of such an advance directive for health care or the  
35 withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal  
36 of the provision of nourishment or hydration operate to deny any additional insurance

1 benefits for accidental death of the declarant in any case in which the terminal condition of  
2 the declarant is the result of accident, notwithstanding any term of the policy to the contrary.

3 31-32-12. *Physician's failure or refusal to comply with certain directions made by a*  
4 *declarant*

5 (a) No physician, health care facility, or health care provider and no health care service  
6 plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or  
7 nonprofit hospital service plan shall require any person to execute an advance directive for  
8 health care as a condition for being insured for or receiving health care services.

9 (b) No health care facility shall prepare or offer to prepare an advance directive for health  
10 care unless specifically requested to do so by a person desiring to execute an advance  
11 directive for health care. For purposes of this subsection, the Department of Corrections  
12 shall not be deemed to be a health care facility.

13 31-32-13. *Penalties*

14 All persons shall be subject to the following sanctions in relation to advance directives for  
15 health care, in addition to all other sanctions applicable under any other law or rule of  
16 professional conduct:

17 (1) Any person who, without the declarant's consent, willfully conceals, cancels, or alters  
18 an advance directive for health care or any amendment or revocation of the advance  
19 directive for health care or who falsifies or forges an advance directive for health care,  
20 amendment, or revocation shall be civilly liable and guilty of a misdemeanor;

21 (2) Any person who falsifies or forges an advance directive for health care of another or  
22 who willfully conceals or withholds personal knowledge of an amendment or revocation  
23 of an advance directive for health care with the intent to cause a withholding or  
24 withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision  
25 of nourishment or hydration contrary to the intent of the declarant and thereby, because  
26 of such act, directly causes life-sustaining procedures or the provision of nourishment or  
27 hydration to be withheld or withdrawn and death thereby to be hastened shall be subject  
28 to prosecution for criminal homicide as provided in Chapter 5 of Title 16;

29 (3) Any person who requires or prevents execution of an advance directive for health care  
30 as a condition of ensuring or providing any type of health care services to an individual  
31 shall be civilly liable and guilty of a misdemeanor; and

32 (4) Any person who willfully witnesses an advance directive for health care knowing at  
33 the time he or she is not eligible to witness such advance directive under subsection (c) of  
34 Code Section 31-32-5 or who coerces or attempts to coerce a person into making an  
35 advance directive for health care shall be civilly liable and guilty of a misdemeanor.

1 31-32-14. *Effect of chapter on other legal rights and duties*

2 (a) Nothing in this chapter shall impair or supersede any legal right or legal responsibility  
3 which any person may have to effect the withholding or withdrawal of life-sustaining  
4 procedures or the withholding or withdrawal of the provision of nourishment or hydration  
5 in any lawful manner.

6 (b) Nothing in this chapter shall be construed to condone, authorize, or approve mercy  
7 killing or to permit any affirmative or deliberate act or omission to end life other than to  
8 permit the process of dying as provided in this chapter. Furthermore, nothing in this chapter  
9 shall be construed to condone, authorize, or approve abortion.

10 (c) This chapter shall create no presumption concerning the intention of an individual who  
11 has not executed an advance directive for health care to consent to the use or withholding  
12 or withdrawal of life-sustaining procedures or the withholding or withdrawal of the  
13 provision of nourishment or hydration in the event of a terminal condition or state of  
14 permanent unconsciousness.

15 (d) Unless otherwise specifically provided in an advance directive for health care, a  
16 declarant's direction regarding the withholding or withdrawal of life-sustaining procedures  
17 or the withholding or withdrawal of the provision of nourishment or hydration shall be  
18 ineffective and inoperative as long as there is an available health care agent to make  
19 decisions for and on behalf of the declarant regarding the withholding or withdrawal of  
20 life-sustaining procedures or the withholding or withdrawal of the provision of nourishment  
21 or hydration when the declarant is in a terminal condition or state of permanent  
22 unconsciousness.

23 (e) Unless an advance directive for health care provides otherwise, a health care agent who  
24 is known to a health care provider to be available and willing to make health care decisions  
25 for a declarant has priority over any other person, including any guardian, to act for the  
26 declarant in all matters covered by the advance directive for health care.

27 (f) Nothing in this chapter shall affect the delegation of a parent's power to control the  
28 health care of a minor child."

29 **SECTION 3.**

30 Said title is further amended by repealing Chapter 36, relating to durable power of attorney  
31 for health care, and designating said chapter as reserved.

32 **SECTION 4.**

33 Code Section 10-12-4 of the Official Code of Georgia Annotated, relating to the legal effect  
34 of electronic signatures, is amended by revising paragraph (3) of subsection (i) as follows:

1 (3) The provisions of this Code section shall not apply to any rule of law governing the  
2 creation or execution of a will or testamentary or donative trust, living will, advance  
3 directive for health care, or health care power of attorney, or to any record that serves as  
4 a unique and transferable physical token of rights and obligations, including, without  
5 limitation, negotiable instruments and instruments of title wherein possession of the  
6 instrument is deemed to confer title."

7 **SECTION 5.**

8 Chapter 5 of Title 16 of the Official Code of Georgia Annotated, relating to crimes against  
9 the person, is amended by revising subsection (d) of Code Section 16-5-5, relating to offering  
10 to assist in the commission of suicide, as follows:

11 (d) The provisions of this Code section shall not be deemed to affect any of the laws, in  
12 whole or in part, that may be applicable to the withholding or withdrawal of medical or  
13 health care treatment, including, but not limited to, laws related to a living will, a durable  
14 power of attorney for health care, an advance directive for health care, or a written order not  
15 to resuscitate."

16 **SECTION 6.**

17 Said chapter is further amended by revising subsection (b) of Code Section 16-5-100, relating  
18 to cruelty to a person 65 years of age or older, as follows:

19 (b) The provisions of this Code section shall not apply to a physician nor any person acting  
20 under ~~his or her~~ a physician's direction nor to a hospital, skilled nursing facility, hospice,  
21 nor any agent or employee thereof who is in good faith following a course of treatment  
22 developed in accordance with accepted medical standards or who is acting in good faith in  
23 accordance with a living will ~~as provided in Chapter 32 of Title 31~~, a durable power of  
24 attorney for health care ~~as provided in Chapter 36 of Title 31~~, an advance directive for  
25 health care, ~~an order not to resuscitate as provided in Chapter 39 of Title 31~~, or the  
26 instructions of the patient or the patient's lawful surrogate decision maker, nor shall the  
27 provisions of this Code section require any physician, any institution licensed in accordance  
28 with Chapter 7 of Title 31 or any employee or agent thereof to provide health care services  
29 or shelter to any person in the absence of another legal obligation to do so."

30 **SECTION 7.**

31 Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is amended  
32 by revising subsection (c) of Code Section 29-4-3, relating to order of preference in selection  
33 of guardians, as follows:



1 "(c) At any time prior to the appointment of a guardian, an adult may nominate in writing  
 2 an individual to serve as that adult's guardian should the adult be judicially determined to  
 3 be in need of a guardian, and that nomination shall be given the preference described in this  
 4 Code section, provided that it is signed in accordance with the provisions of subsection (e)  
 5 of this Code section or the provisions of Code Section ~~31-36-5~~ 31-32-5."

6 **SECTION 8.**

7 Said title is further amended by revising paragraph (6) of subsection (b) of Code Section  
 8 29-4-10, relating to petition for appointment of guardian, as follows:

9 "(6) Whether, to the petitioner's knowledge, there exists any living will, durable power  
 10 of attorney for health care, advance directive for health care, order relating to  
 11 cardiopulmonary resuscitation, or other instrument that deals with the management of the  
 12 person of the proposed ward in the event of incapacity and the name and address of any  
 13 fiduciary or agent named in the instrument;"

14 **SECTION 9.**

15 Said title is further amended by revising subsection (b) of Code Section 29-4-21, relating to  
 16 rights and privileges removed from ward upon appointment of a guardian, as follows:

17 "(b) The mere appointment of a guardian does not revoke the powers of an agent who was  
 18 previously appointed by the ward to act as an agent under a durable power of attorney for  
 19 health care or health care agent under an advance directive for health care."

20 **SECTION 10.**

21 Said title is further amended by revising subsection (b) of Code Section 29-5-21, relating to  
 22 rights and powers removed from ward, as follows:

23 "(b) The mere appointment of a conservator does not revoke the powers of an agent who  
 24 was previously appointed by the ward to act as the ward's agent under a durable power of  
 25 attorney for health care or health care agent under an advance directive for health care."

26 **SECTION 11.**

27 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by revising  
 28 subsection (b) of Code Section 31-8-55, relating to the state or community ombudsman's  
 29 authority to enter and investigate certain facilities, as follows:

30 "(b) The state ombudsman or community ombudsman shall have the authority to enter any  
 31 long-term care facility and shall use his or her best efforts to enter such facility during  
 32 normal visiting hours. Upon entering the long-term care facility, the ombudsman shall  
 33 notify the administrator or, in the absence of the administrator, the person in charge of the

1 facility, before speaking to any residents. After notifying the administrator or the person  
 2 in charge of the facility, the ombudsman may communicate privately and confidentially  
 3 with residents of the facility, individually or in groups. The ombudsman shall have access  
 4 to the medical and social records of any resident if:

5 (1) The ombudsman has the permission of the resident or the legal representative or  
 6 guardian of the resident;

7 (2) The resident is unable to consent to the review and has no legal representative or  
 8 guardian; or

9 (3) There is a guardian of the person of the resident and that guardian refuses to permit  
 10 access to the records necessary to investigate a complaint, and:

11 (A) There is reasonable cause to believe that the guardian is not acting in the best  
 12 interests of the resident; and

13 (B) A community ombudsman obtains the approval of the state ombudsman.

14 As used in this Code section, the term 'legal representative' means an agent under a valid  
 15 power of attorney, provided that the agent is acting within the scope of his or her agency;  
 16 an agent under a durable power of attorney for health care or health care agent under an  
 17 advance directive for health care; or an executor, executrix, administrator, or administratrix  
 18 of the estate of a deceased resident. The ombudsman shall have the authority to inspect the  
 19 physical plant and have access to the administrative records, policies, and documents of the  
 20 facility to which the residents have or the general public has access. Entry and investigation  
 21 provided by this Code section shall be conducted in a manner which will not significantly  
 22 disrupt the provision of nursing or other care to residents."

## 23 SECTION 12.

24 Said title is further amended by revising subsection (a) of Code Section 31-9-2, relating to  
 25 persons authorized to consent to surgical or medical treatment, as follows:

26 "(a) In addition to such other persons as may be authorized and empowered, any one of the  
 27 following persons is authorized and empowered to consent, either orally or otherwise, to any  
 28 surgical or medical treatment or procedures not prohibited by law which may be suggested,  
 29 recommended, prescribed, or directed by a duly licensed physician:

30 (1) Any adult, for himself or herself, whether by living will, advance directive for health  
 31 care, or otherwise;

32 (1.1) Any person authorized to give such consent for the adult under a ~~health care agency~~  
 33 ~~complying with~~ an advance directive for health care or durable power of attorney for  
 34 health care under Chapter 36 32 of Title 31, ~~the 'Durable Power of Attorney for Health~~  
 35 ~~Care Act~~;

1 (2) In the absence or unavailability of a living spouse, any parent, whether an adult or a  
2 minor, for his or her minor child;

3 (3) Any married person, whether an adult or a minor, for himself or herself and for his or  
4 her spouse;

5 (4) Any person temporarily standing in loco parentis, whether formally serving or not, for  
6 the minor under his or her care; and any guardian, for his or her ward;

7 (5) Any female, regardless of age or marital status, for herself when given in connection  
8 with pregnancy, or the prevention thereof, or childbirth; or

9 (6) Upon the inability of any adult to consent for himself or herself and in the absence of  
10 any person to consent under paragraphs (2) through (5) of this subsection, the following  
11 persons in the following order of priority:

12 (A) Any adult child for his or her parents;

13 (B) Any parent for his or her adult child;

14 (C) Any adult for his or her brother or sister; or

15 (D) Any grandparent for his or her grandchild."

### 16 SECTION 13.

17 Said title is further amended by revising paragraph (2) of subsection (a) of Code Section  
18 31-33-2, relating to furnishing copy of health records to a patient, provider, or other  
19 authorized person, as follows:

20 "(2) Upon written request from the patient or a person authorized to have access to the  
21 patient's record under a ~~health care power of attorney~~ an advance directive for health care  
22 or a durable power of attorney for health care for such patient, the provider having custody  
23 and control of the patient's record shall furnish a complete and current copy of that record,  
24 in accordance with the provisions of this Code section. If the patient is deceased, such  
25 request may be made by the following persons:

26 (A) The executor, administrator, or temporary administrator for the decedent's estate  
27 if such person has been appointed;

28 (B) If an executor, administrator, or temporary administrator for the decedent's estate  
29 has not been appointed, by the surviving spouse;

30 (C) If there is no surviving spouse, by any surviving child; and

31 (D) If there is no surviving child, by any parent."

### 32 SECTION 14.

33 Said title is further amended by revising paragraph (2) of subsection (a) of Code Section  
34 31-36A-6, relating to persons authorized to consent, as follows:

1       "~~(2) Any person authorized to give such consent for the adult under a health care agency~~  
 2       ~~complying with Chapter 36 of this title, the 'Durable Power of Attorney for Health Care~~  
 3       ~~Act'~~ an advance directive for health care or durable power of attorney for health care under  
 4       Chapter 32 of this title;"

5   **SECTION 15.**

6       Said title is further amended by revising subparagraph (A) of paragraph (3) of Code Section  
 7       31-39-2, relating to definitions for cardiopulmonary resuscitation, as follows:

8               "~~(A) Any agent or health care agent appointed pursuant to Chapter 36 of this title, the~~  
 9               ~~'Durable Power of Attorney for Health Care Act'~~ Chapter 32 of this title;"

10    **SECTION 16.**

11       Code Section 37-2-35 of the Official Code of Georgia Annotated, relating to relationship to  
 12       service recipients, is amended by revising subsection (b) as follows:

13       "(b) The state ombudsman or a community ombudsman shall have the authority to enter any  
 14       facility, premises, or property where disability services are provided and shall use his or her  
 15       best efforts to enter such facility, premises, or property during normal business hours. Upon  
 16       entering such facility, premises, or property, the ombudsman shall notify the administrator  
 17       or, in the absence of the administrator, the person in charge of such facility, premises, or  
 18       property before speaking to any service recipient. After notifying the administrator or the  
 19       person in charge of such facility, premises, or property, the ombudsman may communicate  
 20       privately and confidentially with service recipients in such facility, premises, or property  
 21       individually or in groups. The ombudsman shall have access to the medical, social, and  
 22       disability records of any service recipient if:

23           (1) The ombudsman has the permission of the service recipient or the legal representative  
 24           or guardian of the service recipient;

25           (2) The service recipient is unable to consent to the review and has no legal representative  
 26           or guardian; or

27           (3) There is a guardian of the person of the service recipient and that guardian refuses to  
 28           permit access to the records necessary to investigate a complaint, and:

29               (A) There is reasonable cause to believe that the guardian is not acting in the best  
 30               interest of the service recipient; and

31               (B) A community ombudsman obtains the approval of the state ombudsman.

32       As used in this Code section, the term 'legal representative' means an agent under a valid  
 33       power of attorney, provided that the agent is acting within the scope of his or her agency;  
 34       an agent under a durable power of attorney for health care or health care agent under an  
 35       advance directive for health care; or an executor, executrix, administrator, or administratrix

1 of the estate of a deceased service recipient. The ombudsman shall have the authority to  
 2 inspect the physical plant and have access to the administrative records, policies, and  
 3 documents of the facility, premises, or property to which the service recipients have or the  
 4 general public has access. Entry and investigation as provided by this Code section shall  
 5 be conducted in a manner which will not significantly disrupt the provision of disability  
 6 services to service recipients."

7 **SECTION 17.**

8 Code Section 44-5-143 of the Official Code of Georgia Annotated, relating to adult decedents,  
 9 is amended by revising paragraph (1) of subsection (b) as follows:

10 "(1) Any person having the power to permit an anatomical gift of all or part of the body  
 11 of the decedent if such power is granted pursuant to a ~~health care agency created under~~  
 12 ~~Chapter 36 of Title 31, the 'Durable Power of Attorney for Health Care Act'~~ durable power  
 13 of attorney for health care or advance directive for health care under Chapter 32 of Title  
 14 31;"

15 **SECTION 18.**

16 Code Section 49-6-72 of the Official Code of Georgia Annotated, relating to definitions for  
 17 services for the aging, is amended by revising paragraph (9) as follows:

18 "(9) 'Primary caregiver' means the one identified relative or other person in a relationship  
 19 of responsibility, such as an agent under a valid durable power of attorney for health care  
 20 or health care agent under a valid advance directive for health care, who has assumed the  
 21 primary responsibility for the provision of care needed to maintain the physical or mental  
 22 health of a functionally dependent older adult or other adult suffering from dementia, who  
 23 lives in the same residence with such individual, and who does not receive financial  
 24 compensation for the care provided. A substantiated case of abuse, neglect, or  
 25 exploitation, as defined in Chapter 5 of Title 30, the 'Disabled Adults and Elder Persons  
 26 Protection Act,' or pursuant to any other civil or criminal statute regarding an older adult,  
 27 shall prohibit a primary caregiver from receiving benefits under this article unless  
 28 authorized by the department to prevent further abuse."

29 **SECTION 19.**

30 This Act shall become effective on July 1, 2007.

31 **SECTION 20.**

32 All laws and parts of laws in conflict with this Act are repealed.