

The Senate Judiciary Committee offered the following substitute to HB 24:

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn.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

(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution.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 uses understandable and
7 everyday language in order to encourage more citizens of this state to execute advance
8 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.

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

23 31-32-2.

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 primary responsibility at the time
28 of reference for the treatment and care of the declarant.

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

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

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

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

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

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

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

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

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

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

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

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

31-32-3.

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

31-32-4.

'GEORGIA ADVANCE DIRECTIVE FOR HEALTH CARE

By: _____ Date of Birth: _____
(Print Name) (Month/Day/Year)

This advance directive for health care has four parts:

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

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

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

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

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

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

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

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

PART ONE: HEALTH CARE AGENT

[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:

1 Name: _____

2 Address: _____

3 Telephone Numbers: _____

4 (Home, Work, and Mobile)

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

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

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

11 Name: _____

12 Address: _____

13 Telephone Numbers: _____

14 (Home, Work, and Mobile)

15 Name: _____

16 Address: _____

17 Telephone Numbers: _____

18 (Home, Work, and Mobile)

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

20 My health care agent will make health care decisions for me when I am unable to
21 communicate my health care decisions or I choose to have my health care agent
22 communicate my health care decisions.

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

- 25 • Admit me to or discharge me from any hospital, skilled nursing facility, hospice, or
26 other health care facility or service;
- 27 • Request, consent to, withhold, or withdraw any type of health care; and
- 28 • Contract for any health care facility or service for me, and to obligate me to pay for
29 these services (and my health care agent will not be financially liable for any services or
30 care contracted for me or on my behalf).

1 My health care agent will be my personal representative for all purposes of federal or state
2 law related to privacy of medical records (including the Health Insurance Portability and
3 Accountability Act of 1996) and will have the same access to my medical records that I
4 have and can disclose the contents of my medical records to others for my ongoing health
5 care.

6 My health care agent may accompany me in an ambulance or air ambulance if in the
7 opinion of the ambulance personnel protocol permits a passenger and my health care agent
8 may visit or consult with me in person while I am in a hospital, skilled nursing facility,
9 hospice, or other health care facility or service if its protocol permits visitation.

10 My health care agent may present a copy of this advance directive for health care in lieu
11 of the original and the copy will have the same meaning and effect as the original.

12 I understand that under Georgia law:

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

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

20 When making health care decisions for me, my health care agent should think about what
21 action would be consistent with past conversations we have had, my treatment preferences
22 as expressed in PART TWO (if I have filled out PART TWO), my religious and other
23 beliefs and values, and how I have handled medical and other important issues in the past.
24 If what I would decide is still unclear, then my health care agent should make decisions for
25 me that my health care agent believes are in my best interest, considering the benefits,
26 burdens, and risks of my current circumstances and treatment options.

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

28 **(A) AUTOPSY**

29 My health care agent will have the power to authorize an autopsy of my body unless I have
30 limited my health care agent's power by initialing below.

(B) ORGAN DONATION AND DONATION OF BODY

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

8 _____ (Initials) My health care agent will not have the power to make a disposition
9 of my body for use in a medical study program.

(C) FINAL DISPOSITION OF BODY

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

17 Name: _____

18 Address: _____

19 Telephone Numbers: _____
20 (Home, Work, and Mobile)

21 I wish for my body to be:

22 _____ (Initials) Buried

23 OR

24 _____ (Initials) Cremated

PART TWO: TREATMENT PREFERENCES

- 8 -

1 *you about your treatment preferences. PART TWO will be effective even if PART ONE is not*
2 *completed. If you have not selected a health care agent in PART ONE, or if your health care*
3 *agent is not available, then PART TWO will provide your physician and other health care*
4 *providers with your treatment preferences. If you have selected a health care agent in PART*
5 *ONE, then your health care agent will have the authority to make all health care decisions*
6 *for you regarding matters covered by PART TWO. Your health care agent will be guided by*
7 *your treatment preferences and other factors described in Section (4) of PART ONE.]*

8 **(6) CONDITIONS**

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

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

11 _____ (Initials) A terminal condition, which means I have an incurable or
12 irreversible condition that will result in my death in a relatively short period of time.

13 _____ (Initials) A state of permanent unconsciousness, which means I am in an
14 incurable or irreversible condition in which I am not aware of myself or my environment
15 and I show no behavioral response to my environment.

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

18 **(7) TREATMENT PREFERENCES**

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

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

27 (A) _____ (Initials) Try to extend my life for as long as possible, using all
28 medications, machines, or other medical procedures that in reasonable medical judgment

could keep me alive. If I am unable to take nutrition or fluids by mouth, then I want to receive nutrition or fluids by tube or other medical means.

OR

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

OR

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

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

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

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

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

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

(8) ADDITIONAL STATEMENTS

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

1 _____
2 _____
3 _____

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

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

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

9 _____ (Initials) I want PART TWO to be carried out if my fetus is not viable.

PART THREE: GUARDIANSHIP

10 **(10) GUARDIANSHIP**

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

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

24 (A) _____ (Initials) I nominate the person serving as my health care agent under
25 PART ONE to serve as my guardian.

26 OR

27 (B) _____ (Initials) I nominate the following person to serve as my guardian:

Name: _____

Address: _____

Telephone Numbers: _____

(Home, Work, and Mobile)

PART FOUR: EFFECTIVENESS AND SIGNATURES

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

This form revokes any advance directive for health care, durable power of attorney for health care, health care proxy, or living will that I have completed before this date.

Unless I have initialed below and have provided alternative future dates or events, this advance directive for health care will become effective at the time I sign it and will remain effective until my death (and after my death to the extent authorized in Section (5) of PART ONE).

_____ (Initials) This advance directive for health care will become effective on or upon _____ and will terminate on or upon _____.

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

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

A witness:

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

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

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

(Signature of Declarant)

(Date)

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

(Signature of First Witness)

(Date)

Print Name: _____

Address: _____

(Signature of Second Witness)

(Date)

Print Name: _____

Address: _____

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

31-32-5.

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

(1) Appoints a health care agent;

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

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

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

(b) When a document substantially complying with Code Section 31-32-4 is executed in accordance with this Code section, it shall be treated as an advance directive for health care which complies with this Code section. No provision of this chapter shall be construed to bar a declarant from using any other form of advance directive for health care which

1 complies with this Code section. A document covering any matter contained in paragraph
2 (1), (2), or (3) of subsection (a) of this Code section which was executed in another state
3 and is valid under the laws of the state where executed shall be treated as an advance
4 directive for health care which complies with this Code section.

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

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

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

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

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

14 (3) Not more than one of the witnesses may be an employee, agent, or medical staff
15 member of the health care facility in which the declarant is receiving health care.

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

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

20 (f) An advance directive for health care may be amended at any time by a written
21 document signed by the declarant or by some other person in the declarant's presence and
22 at the declarant's express direction, and witnessed in accordance with the provisions of
23 subsection (c) of this Code section.

24 31-32-6.

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

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

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

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

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

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

27 (c) An advance directive for health care which survives disability, incapacity, or
28 incompetency shall not be revoked solely by the appointment of a guardian or receiver for
29 the declarant. Absent an order of the probate court or superior court having jurisdiction
30 directing a guardian of the person to exercise the powers of the declarant under an advance
31 directive for health care which survives disability, incapacity, or incompetency, the
32 guardian of the person has no power, duty, or liability with respect to any health care
33 matters covered by the advance directive for health care; provided, however, that no order
34 usurping the authority of a health care agent known to the proposed guardian shall be
35 entered unless notice is sent by first-class mail to the health care agent's last known address
36 and it is shown by clear and convincing evidence that the health care agent is acting in a
37 manner inconsistent with the power of attorney.

1 31-32-7.

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

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

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

19 (d) A health care agent may sign and deliver all instruments, negotiate and enter into all
20 agreements, and do all other acts reasonably necessary to implement the exercise of the
21 powers granted to the health care agent. A health care agent shall be authorized to
22 accompany a declarant in an ambulance or air ambulance if in the opinion of the ambulance
23 personnel protocol permits a passenger and to visit or consult in person with a declarant
24 who is admitted to a health care facility if the health care facility's protocol permits such
25 visitation.

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

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

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

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

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

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

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

31-32-8.

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

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

(2) A health care decision made by a health care agent in accordance with the terms of an advance directive for health care shall be complied with by every health care provider to whom the decision is communicated, subject to the health care provider's right to administer treatment for the declarant's comfort or alleviation of pain; provided, however, that if the health care provider is unwilling to comply with the health care agent's decision, the health care provider shall promptly inform the health care agent who shall then be responsible for arranging for the declarant's transfer to another health care provider. A health care provider who is unwilling to comply with the health care agent's decision shall provide reasonably necessary consultation and care in connection with the pending transfer;

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

(4) If and to the extent an advance directive for health care empowers the health care agent to direct that an autopsy of the declarant's body be made; to make an anatomical gift of any part or all of the declarant's body pursuant to Article 6 of Chapter 5 of Title 44, the 'Georgia Anatomical Gift Act'; or to direct the final disposition of the declarant's body, including funeral arrangements, burial, or cremation, the decisions of the health care agent on such matters shall be deemed the act of the declarant or of the person who has priority under law to make the necessary decisions, and each person to whom a direction by the health care agent in accordance with the terms of the agency is communicated shall comply with such direction to the extent it is in accord with reasonable medical standards or other relevant standards at the time of reference.

31-32-9.

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

(1) Shall determine that, to the best of that attending physician's knowledge, the declarant is not pregnant, or if she is, that the fetus is not viable and that the declarant has

specifically indicated in the advance directive for health care that the declarant's directions regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration are to be carried out;

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

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

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

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

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

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

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

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

1 31-32-10.

2 (a) Each health care provider, health care facility, and any other person who acts in good
3 faith reliance on any direction or decision by the health care agent shall be protected and
4 released to the same extent as though such person had interacted directly with the declarant
5 as a fully competent person. Without limiting the generality of the foregoing, the following
6 specific provisions shall also govern, protect, and validate the acts of the health care agent
7 and each such health care provider, health care facility, and any other person acting in good
8 faith reliance on such direction or decision:

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

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

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

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

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

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

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

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

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

18 31-32-11.

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

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

1 declarant, nor shall the making of such an advance directive for health care or the
2 withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal
3 of the provision of nourishment or hydration operate to deny any additional insurance
4 benefits for accidental death of the declarant in any case in which the terminal condition of
5 the declarant is the result of accident, notwithstanding any term of the policy to the contrary.

6 31-32-12.

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

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

15 31-32-13.

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

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

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

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

34 (4) Any person who willfully witnesses an advance directive for health care knowing at
35 the time he or she is not eligible to witness such advance directive under subsection (c) of

Code Section 31-32-5 or who coerces or attempts to coerce a person into making an advance directive for health care shall be civilly liable and guilty of a misdemeanor.

31-32-14.

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

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

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

(d) Except to the extent provided in an advance directive for health care and subject to the health care agent's duty to exercise granted powers in such manner as the health care agent deems consistent with the intentions and desires of the declarant pursuant to subsection (b) of Code Section 31-32-7, a declarant's directions in an advance directive for health care regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration shall be ineffective as long as there is a health care agent available and willing to make decisions for and on behalf of the declarant regarding the withholding or withdrawal of life-sustaining procedures or the withholding or withdrawal of the provision of nourishment or hydration when the declarant is in a terminal condition or state of permanent unconsciousness.

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

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

SECTION 3.

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

SECTION 4.

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

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

SECTION 5.

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

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

SECTION 6.

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

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

SECTION 7.

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

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

SECTION 8.

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

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

SECTION 9.

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

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

SECTION 10.

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

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

SECTION 11.

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

"(b) The state ombudsman or community ombudsman shall have the authority to enter any long-term care facility and shall use his or her best efforts to enter such facility during normal visiting hours. Upon entering the long-term care facility, the ombudsman shall notify the administrator or, in the absence of the administrator, the person in charge of the facility, before speaking to any residents. After notifying the administrator or the person in charge of the facility, the ombudsman may communicate privately and confidentially with residents of the facility, individually or in groups. The ombudsman shall have access to the medical and social records of any resident if:

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

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

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

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

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

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

SECTION 12.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 13.

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

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

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

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

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

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

SECTION 14.

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

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

SECTION 15.

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

"(A) Any agent under a durable power of attorney for health care or health care agent under an advance directive for health care appointed pursuant to ~~Chapter 36 of this title, the 'Durable Power of Attorney for Health Care Act'~~ Chapter 32 of this title;"

SECTION 16.

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

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

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

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

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

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

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

1 As used in this Code section, the term 'legal representative' means an agent under a valid
2 power of attorney, provided that the agent is acting within the scope of his or her agency;
3 an agent under a durable power of attorney for health care or health care agent under an
4 advance directive for health care; or an executor, executrix, administrator, or administratrix
5 of the estate of a deceased service recipient. The ombudsman shall have the authority to
6 inspect the physical plant and have access to the administrative records, policies, and
7 documents of the facility, premises, or property to which the service recipients have or the
8 general public has access. Entry and investigation as provided by this Code section shall
9 be conducted in a manner which will not significantly disrupt the provision of disability
10 services to service recipients."

11 **SECTION 17.**

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

14 "(1) Any person having the power to permit an anatomical gift of all or part of the body
15 of the decedent if such power is granted pursuant to a ~~health care agency created under~~
16 ~~Chapter 36 of Title 31, the 'Durable Power of Attorney for Health Care Act'~~ durable power
17 of attorney for health care or advance directive for health care under Chapter 32 of Title
18 31;"

19 **SECTION 18.**

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

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

33 **SECTION 19.**

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

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SECTION 20.

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