

House Bill 278

By: Representatives Bearden of the 68th, Cooke of the 18th, Roberts of the 154th, Powell of the 29th, Clark of the 98th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 9 of Title 31 of the Official Code of Georgia Annotated, relating to
2 consent for surgical or medical treatment, so as to provide for the nourishment or hydration
3 of a person receiving health care; to amend Chapter 32 of Title 31 of the Official Code of
4 Georgia Annotated, relating to advance directives for health care, so as to provide for
5 definitions; to provide for a form; to provide that declarants shall be entitled to nourishment
6 or hydration under certain circumstances; to provide for related matters; to repeal conflicting
7 laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 9 of Title 31 of the Official Code of Georgia Annotated, relating to consent for
11 surgical or medical treatment, is amended by adding a new Code section to read as follows:

12 "31-9-8.

13 (a) For the purposes of this Code section:

14 (1) 'Attending physician' means the physician who has primary responsibility at any time
15 of reference for the treatment and care of a person.

16 (2) 'Health care' shall have the same meaning as provided for in Code Section 31-32-2.

17 (3) 'Nourishment or hydration' means any form of caloric energy or fluids that the human
18 body may draw upon to promote its normal chemical balance and system function.

19 (b) Except as otherwise provided in a valid advance directive for health care created
20 pursuant to Chapter 32 of this title stating a person's wishes to the contrary, no person
21 receiving health care shall be deprived of nourishment or hydration. Under no
22 circumstances shall an attending physician deprive a person receiving health care of
23 nourishment or hydration unless the attending physician determines that such deprivation
24 is necessary for medical treatment.

25 (c) The professional license of any person found to have knowingly and willfully violated
 26 subsection (b) of this Code section shall be suspended for a period of not less than five
 27 years by the professional licensing board issuing such license upon such finding.

28 (d)(1) Any person who violates subsection (b) of this Code section shall be liable for
 29 wrongful death pursuant to Chapter 4 of Title 51 and a civil fine in an amount determined
 30 by the trier of fact if the person from whom nourishment or hydration, or both, is
 31 withheld dies as a result, directly or indirectly, of such withholding of nourishment or
 32 hydration, or both, or if the withholding of such nourishment or hydration, or both,
 33 accelerates the death of such person.

34 (2) Except as provided in paragraph (1) of this subsection, any person who violates
 35 subsection (b) of this Code section shall be liable to any person from whom nourishment
 36 or hydration, or both, is withheld in violation of subsection (b) of this Code section for
 37 damages and a civil fine in an amount determined by the trier of fact if the withholding
 38 of nourishment or hydration does not result in the death of the person.

39 (3) Any medical facility that knowingly permits individuals in its employ or independent
 40 contractors practicing in such facility to violate subsection (b) of this Code section with
 41 respect to persons who are patients in such facility shall be liable for wrongful death
 42 pursuant to Chapter 4 of Title 51 and a civil fine in an amount determined by the trier of
 43 fact if the person from whom nourishment or hydration, or both, is withheld dies as a
 44 result, directly or indirectly, of such withholding of nourishment or hydration, or both,
 45 or if the withholding of such nourishment or hydration, or both, accelerates the death of
 46 such person.

47 (4) Except as provided in paragraph (3) of this subsection, any medical facility that
 48 knowingly permits individuals in its employ or independent contractors practicing in such
 49 facility to violate subsection (b) of this Code section shall be liable to any person from
 50 whom nourishment or hydration, or both, is withheld in violation of subsection (b) of this
 51 Code section for damages and a civil fine in an amount determined by the trier of fact if
 52 the withholding of nourishment or hydration, or both, does not result in the death of such
 53 person."

54 **SECTION 2.**

55 Chapter 32 of Title 31 of the Official Code of Georgia Annotated, relating to advance
 56 directives for health care, is amended by revising Code Section 31-32-2, relating to
 57 definitions, by adding a new paragraph and revising paragraph (12) as follows:

58 "(10.1) 'Nourishment or hydration' means any form of caloric energy or fluids that the
 59 human body may draw upon to promote its normal chemical balance and system function.
 60 It shall not mean life-sustaining procedure, medical treatment, or health care."

61 "(12) 'Provision of nourishment or hydration' means the provision of nutrition or fluids
62 by tube or other ~~medical~~ means."

63 **SECTION 3.**

64 Said chapter is further amended by revising Code Section 31-32-4, relating to the form of
65 advance directive for health care, as follows:

66 "31-32-4.

67 'GEORGIA ADVANCE DIRECTIVE FOR HEALTH CARE

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

70 *This advance directive for health care has four parts:*

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

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

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

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

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

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

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

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

PART ONE: HEALTH CARE AGENT

103
 104 *[PART ONE will be effective even if PART TWO is not completed. A physician or health*
 105 *care provider who is directly involved in your health care may not serve as your health care*
 106 *agent. If you are married, a future divorce or annulment of your marriage will revoke the*
 107 *selection of your current spouse as your health care agent. If you are not married, a future*
 108 *marriage will revoke the selection of your health care agent unless the person you selected*
 109 *as your health care agent is your new spouse.]*

110 **(1) HEALTH CARE AGENT**

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

112 Name: _____

113 Address: _____

114 Telephone Numbers: _____

115 (Home, Work, and Mobile)

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

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

118 If my health care agent cannot be contacted in a reasonable time period and cannot be
 119 located with reasonable efforts or for any reason my health care agent is unavailable or

120 unable or unwilling to act as my health care agent, then I select the following, each to act
 121 successively in the order named, as my back-up health care agent(s):

122 Name: _____

123 Address: _____

124 Telephone Numbers: _____

125 (Home, Work, and Mobile)

126 Name: _____

127 Address: _____

128 Telephone Numbers: _____

129 (Home, Work, and Mobile)

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

131 My health care agent will make health care decisions for me when I am unable to
 132 communicate my health care decisions or I choose to have my health care agent
 133 communicate my health care decisions.

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

- 136 • Admit me to or discharge me from any hospital, skilled nursing facility, hospice, or
 137 other health care facility or service;
- 138 • Request, consent to, withhold, or withdraw any type of health care; and
- 139 • Contract for any health care facility or service for me, and to obligate me to pay for
 140 these services (and my health care agent will not be financially liable for any services or
 141 care contracted for me or on my behalf).

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

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

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

153 I understand that under Georgia law:

- 154 • My health care agent may refuse to act as my health care agent;
- 155 • A court can take away the powers of my health care agent if it finds that my health care
 156 agent is not acting properly; and
- 157 • My health care agent does not have the power to make health care decisions for me
 158 regarding psychosurgery, sterilization, or treatment or involuntary hospitalization for
 159 mental or emotional illness, developmental disability, or addictive disease.

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

161 ~~When making health care decisions for me, my health care agent should think about what~~
 162 ~~action would be consistent with past conversations we have had, my treatment preferences~~
 163 ~~as expressed in PART TWO (if I have filled out PART TWO), my religious and other~~
 164 ~~beliefs and values, and how I have handled medical and other important issues in the past.~~
 165 When making health care decisions for me, my health care agent should follow my
 166 treatment preferences as expressed in PART TWO. If I have not filled out PART TWO,
 167 my health care agent should consider the following factors while maintaining a
 168 presumption in favor of providing nourishment or hydration: what action would be
 169 consistent with past conversations we have had, my religious and other beliefs and values,
 170 and how I have handled medical and other important issues in the past. If what I would
 171 decide is still unclear, then my health care agent should make decisions for me that my
 172 health care agent believes are in my best interest, considering the benefits, burdens, and
 173 risks of my current circumstances and treatment options.

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

175 (A) AUTOPSY

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

178 _____ (Initials) My health care agent will not have the power to authorize an
 179 autopsy of my body (unless an autopsy is required by law).

180 (B) ORGAN DONATION AND DONATION OF BODY

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

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

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

187 _____ (Initials) My health care agent will not have the power to donate any of my
188 organs.

189 (C) FINAL DISPOSITION OF BODY

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

192 _____ (Initials) I want the following person to make decisions about the final
193 disposition of my body:

194 Name: _____

195 Address: _____

196 Telephone Numbers: _____

197 (Home, Work, and Mobile)

198 I wish for my body to be:

199 _____ (Initials) Buried

200 OR

201 _____ (Initials) Cremated

202

PART TWO: TREATMENT PREFERENCES

203 *[PART TWO will be effective only if you are unable to communicate your treatment*
204 *preferences after reasonable and appropriate efforts have been made to communicate with*
205 *you about your treatment preferences. PART TWO will be effective even if PART ONE is not*
206 *completed. If you have not selected a health care agent in PART ONE, or if your health care*
207 *agent is not available, then PART TWO will provide your physician and other health care*

208 *providers with your treatment preferences. If you have selected a health care agent in PART*
 209 *ONE, then your health care agent will have the authority to make all health care decisions*
 210 *for you regarding matters covered by PART TWO. Your health care agent will be guided by*
 211 *your treatment preferences and other factors described in Section (4) of PART ONE.]*

212 **(6) CONDITIONS**

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

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

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

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

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

222 **(7) TREATMENT PREFERENCES**

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

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

231 (A) _____ (Initials) Try to extend my life for as long as possible, using all
 232 medications, machines, or other medical procedures that in reasonable medical judgment
 233 could keep me alive. If I am unable to take nutrition or fluids by mouth, then I want to
 234 receive nutrition or fluids by tube or other ~~medical~~ means.

235 OR

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

240 OR

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

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

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

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

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

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

252 **(8) ADDITIONAL STATEMENTS**

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

264 _____
265 _____
266 _____

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

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

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

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

PART THREE: GUARDIANSHIP

274 **(10) GUARDIANSHIP**

275 *[PART THREE is optional. This advance directive for health care will be effective even if*
276 *PART THREE is left blank. If you wish to nominate a person to be your guardian in the*
277 *event a court decides that a guardian should be appointed, complete PART THREE. A court*
278 *will appoint a guardian for you if the court finds that you are not able to make significant*
279 *responsible decisions for yourself regarding your personal support, safety, or welfare. A*
280 *court will appoint the person nominated by you if the court finds that the appointment will*
281 *serve your best interest and welfare. If you have selected a health care agent in PART ONE,*
282 *you may (but are not required to) nominate the same person to be your guardian. If your*
283 *health care agent and guardian are not the same person, your health care agent will have*
284 *priority over your guardian in making your health care decisions, unless a court determines*
285 *otherwise.]*

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

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

290 OR

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

292 Name: _____

293 Address: _____

294 Telephone Numbers: _____

295 (Home, Work, and Mobile)

PART FOUR: EFFECTIVENESS AND SIGNATURES

296

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

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

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

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

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

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

311 A witness:

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

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

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

322 _____
323 (Signature of Declarant) (Date)

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

328 _____
 329 (Signature of First Witness) (Date)

330 Print Name: _____

331 Address: _____

332 _____
 333 (Signature of Second Witness) (Date)

334 Print Name: _____

335 Address: _____

336 *[This form does not need to be notarized.]"*

SECTION 4.

337 Said chapter is further amended by revising Code Section 31-32-7, relating to duties and
 338 responsibilities of health care agents, as follows:

340 "31-32-7.

341 (a) A health care agent shall not have the authority to make a particular health care
 342 decision different from or contrary to the declarant's decision, ~~if any, if.~~ If the declarant
 343 is able to understand the general nature of the health care procedure being consented to or
 344 refused, as determined by the declarant's attending physician based on such physician's
 345 good faith judgment, then a health care agent shall make the health care decision while
 346 maintaining a presumption that the declarant would choose the preservation of the
 347 declarant's life. A health care agent may not choose to refuse or withdraw nourishment or
 348 hydration unless given authority in an advance directive for health care.

349 (b) A health care agent shall be under no duty to exercise granted powers or to assume
 350 control of or responsibility for the declarant's health care; provided, however, that when
 351 granted powers are exercised, the health care agent shall use due care to act for the benefit
 352 of the declarant in accordance with the terms of the advance directive for health care. A
 353 health care agent shall exercise granted powers in such manner as the health care agent
 354 deems consistent with the intentions and desires of the declarant. If a declarant's intentions
 355 and desires are unclear, the health care agent shall act in the declarant's best interest
 356 considering the benefits, burdens, and risks of the declarant's circumstances and treatment

357 options. The health care agent shall maintain a presumption that the declarant would
358 choose the preservation of life.

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

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

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

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

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

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

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

392 (5) Unless otherwise provided, the health care agent is authorized to direct that an
393 autopsy of the declarant's body be made; to make an anatomical gift of any part or all of

394 the declarant's body pursuant to Article 6 of Chapter 5 of Title 44, the 'Georgia Revised
395 Uniform Anatomical Gift Act'; and to direct the final disposition of the declarant's body,
396 including funeral arrangements, burial, or cremation.

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

399 **SECTION 5.**

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