



1998

## A Survey of Living Will and Advanced Health Care Directives

Bretton J. Horttor

[How does access to this work benefit you? Let us know!](#)

Follow this and additional works at: <https://commons.und.edu/ndlr>



Part of the [Law Commons](#)

---

### Recommended Citation

Horttor, Bretton J. (1998) "A Survey of Living Will and Advanced Health Care Directives," *North Dakota Law Review*. Vol. 74: No. 2, Article 3.

Available at: <https://commons.und.edu/ndlr/vol74/iss2/3>

This Article is brought to you for free and open access by the School of Law at UND Scholarly Commons. It has been accepted for inclusion in North Dakota Law Review by an authorized editor of UND Scholarly Commons. For more information, please contact [und.common@library.und.edu](mailto:und.common@library.und.edu).

# A SURVEY OF LIVING WILL AND ADVANCED HEALTH CARE DIRECTIVES

BRETTON J. HORTTOR\*

## I. INTRODUCTION

The living will has been defined as “. . . a document that gives instructions to health care providers about particular kinds of health care that an individual would not want to have to prolong life.”<sup>1</sup> Chicago attorney Luis Kutner first proposed the concept of the living will in the 1950s.<sup>2</sup> Subsequently, he and members of the “Euthanasia Society”<sup>3</sup> developed the first living wills.<sup>4</sup> Bishop Fulton Sheen was the first to sign this new type of document and actor Errol Flynn the second.<sup>5</sup> In 1976, California passed the first statutory act that specifically authorized living wills.<sup>6</sup> Before that point, common law was the only basis for validating the living will document.

In *Cruzan v. Director, Missouri Department of Health*,<sup>7</sup> the United States Supreme Court left the states to regulate the constitutional right to be free from unwanted medical procedures on behalf of incompetent patients.<sup>8</sup> All states now have legislation that lists the requirements for some type of advanced health care directive. Some have based their advanced health care directive legislation on model acts, but many have not. This has resulted in little uniformity among the states. There have been three model acts dealing with the living will advanced directive.

---

\* Bretton J. Horttor is an attorney in private practice in St. Paul, Minnesota. He received his B.A. in Economics from the University of Kansas in 1987, and his J.D. from the University of Kansas School of Law in 1992. He would like to express his sincere thanks and appreciation to his wife, Carolyn M.S. Horttor, for assisting with the editing and preparation of this article.

1. ALAN MEISEL, *THE RIGHT TO DIE* 321 (1989).

2. *Id.*

3. *See* Choice in Dying <[www.choices.org](http://www.choices.org)>. The Euthanasia Society is one of the groups that later merged together to become “Choice in Dying,” a New York based organization.

4. *Id.*

5. *Id.*

6. *See* California Natural Death Act, CAL. HEALTH & SAFETY CODE §§ 7185-7195 (West 1991).

7. 497 U.S. 261 (1990).

8. *Cruzan v. Commissioner, Missouri Department of Health*, 497 U.S. 261, 280 (1990).

## II. SURVEY OF MODEL ACTS

### A. UNIFORM HEALTH CARE DECISIONS ACT (1993)

The most recent of these acts is the "Uniform Health Care Decisions Act (1993)."<sup>9</sup> Delaware,<sup>10</sup> Maine,<sup>11</sup> and New Mexico<sup>12</sup> have adopted this Act with some variations. The Uniform Health Care Decisions Act supersedes the earlier Uniform Rights of the Terminally Ill Act (1985) and the Uniform Rights of the Terminally Ill Act (1989).<sup>13</sup> It is the most recent attempt to unify the law regarding advanced directives.

The Uniform Health Care Decisions Act allows a competent individual to decide all aspects of his or her health care in a single document.<sup>14</sup> This gives the competent individual a much broader range of choices regarding health care decisions than the earlier Uniform Acts. The optional model form grants the authority to make all health care decisions to an agent, including decisions regarding life-sustaining treatment, the provision of pain relief, and "the provision, withholding or withdrawal of artificial nutrition and hydration."<sup>15</sup> Part 1, section 1 of the form is a Power of Attorney for Health Care which allows for the naming of an agent, alternative agent, and a second alternative agent to make health care decisions on behalf of the person who signed the directive.<sup>16</sup> Part 1, section 2 of the form allows the individual to limit the agent's authority to make health care decisions.<sup>17</sup> Part 1, section 3 states that the agent's authority becomes effective on the primary physician's diagnosis that the individual is no longer able to make his or her own health care decisions.<sup>18</sup> However, the declarant can opt to check a box which makes the agent's authority effective immediately, regardless of the declarant's capacity to make his or her own health care decisions.<sup>19</sup> Part 1, section 4 of the form states that the agent has a duty to make decisions in accordance with the power of attorney for health care, and the principal's "other wishes," to the extent they are known to the agent.<sup>20</sup> If those

---

9. UNIF. HEALTH-CARE DECISIONS ACT § 1-19, 9 U.L.A. 236-64 (West Supp. 1997).

10. DEL. CODE ANN. tit. 16, §§ 2501-2518 (Michie 1995 & Supp. 1997).

11. ME. REV. STAT. ANN. tit. 18-A, §§ 5-801 to -817 (West 1998).

12. N.M. STAT. ANN. §§ 24-7A-1 to -18 (Michie 1997).

13. Committee Prefatory Notes, UNIF. HEALTH-CARE DECISIONS ACT §§ 1-19, 9 U.L.A. 236 (West Supp. 1997).

14. See generally UNIF. HEALTH-CARE DECISIONS ACT §§ 1-19, 9 U.L.A. 236-64 (West Supp. 1997).

15. *Id.* § 4, 9 U.L.A. at 244.

16. *Id.* at 245.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* at 246.

wishes are unknown, the agent is to do what is in the individual's best interests, taking into account the principal's personal values.<sup>21</sup> Part 1, section 5 of the form provides for the nomination of a guardian.<sup>22</sup>

Part 2 of the form, entitled "Instructions for Health Care," contains end-of-life living will language. Part 2, section 6(a) allows for the individual to choose not to prolong his or her life if the following conditions are met: The individual has an "incurable or irreversible condition" that will result in death in a relatively short time, he or she becomes unconscious and to a "reasonable degree of medical certainty" will not regain consciousness, or the "likely risks and burdens of treatment would outweigh the expected benefits."<sup>23</sup> Part 2, section 6(b) allows for life to be prolonged as long as medically possible "within the limits of generally accepted health care standards."<sup>24</sup> Part 2, section 7 allows for the provision or withdrawal of artificial nutrition and hydration.<sup>25</sup> Part 2, section 8 allows for the treatment of pain and discomfort.<sup>26</sup> Part 2, section 9 allows for additional instructions if the individual does not agree with the choices listed in the form or wishes to elaborate on the instructions given in the form.<sup>27</sup>

Part 3, section 10 allows for instructions regarding the donation of organs.<sup>28</sup> Part 4, section 11 allows for the designation of a primary physician.<sup>29</sup> Part 4, section 13 has spaces for two witnesses to sign, but witness signatures are not mandatory.<sup>30</sup> The witness spaces are provided to encourage people to act as witnesses.<sup>31</sup> There is no requirement that any of the signatures be notarized.<sup>32</sup> If no agent or guardian has been appointed in the directive, a series of relatives are listed in descending order of priority to make health care decisions as a "surrogate" for the patient.<sup>33</sup> The health care decisions of an agent take precedence over those of a guardian unless a court orders otherwise.<sup>34</sup>

If possible, a health care provider must "promptly communicate" to the patient the decisions made, and who is making them.<sup>35</sup> Any

---

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 246-47.

29. *Id.* at 247.

30. *Id.*

31. Comments to UNIF. HEALTH-CARE DECISIONS ACT § 4, 9 U.L.A. 248-49 (West Supp. 1997).

32. UNIF. HEALTH-CARE DECISIONS ACT § 4, 9 U.L.A. At 247.

33. *Id.* § 5, 9 U.L.A. at 251.

34. *Id.* § 6, 9 U.L.A. at 254.

35. *Id.* § 7(a), 9 U.L.A. at 255.

advanced directive or designation of a surrogate known to the supervising health care provider must be recorded in the patient's health care record.<sup>36</sup> Any change in the patient's capacity that is known by the primary physician must be recorded in the patient's health care record and communicated to the patient and any person authorized to make health care decisions for the patient.<sup>37</sup> Generally, a health care provider must comply with instructions made by the patient or the patient's agent for health care decisions.<sup>38</sup> The health care provider may decline to comply with health care instructions for reasons of "conscience," health care that is "medically ineffective," or contrary to "generally accepted health-care standards," or against a policy of the institution.<sup>39</sup> If a health care provider declines to follow the instructions contained in the directive, he or she must assist in making "all reasonable efforts" to effect the transfer of the patient to another health care provider or institution who will comply with the directive.<sup>40</sup> A health care provider cannot require or prohibit the execution or revocation of an advanced health care directive as a condition before providing health care to a patient.<sup>41</sup> An agent named in an advanced health care directive has all of the same rights as the patient to access all medical health care information.<sup>42</sup> A health care provider is generally immune from civil or criminal liability for following instructions from an agent named in a health care directive, as long as the provider is acting in "good faith" and in accordance with "generally accepted health-care standards."<sup>43</sup> Interested parties may petition the appropriate court to challenge a particular health care decision.<sup>44</sup> Advanced health care directives executed in states that have not enacted the Uniform Health Care Consent Act are considered to be valid if they comply with the Uniform Act.<sup>45</sup>

#### B. UNIFORM RIGHTS OF THE TERMINALLY ILL ACT (1989)

The Uniform Rights of the Terminally Ill Act (1989) is the precursor to the Uniform Health Care Decisions Act. It has been adopted in

---

36. *Id.* § 7(b), 9 U.L.A. at 255.

37. *Id.* § 7(c), 9 U.L.A. at 255.

38. *Id.* § 7(d), 9 U.L.A. at 255.

39. *Id.* § 7(f), (g), 9 U.L.A. at 255.

40. *Id.* § 7(g), 9 U.L.A. at 255.

41. *Id.* § 7(h), 9 U.L.A. at 256.

42. *Id.* § 8, 9 U.L.A. at 257.

43. *Id.* § 9, 9 U.L.A. at 257-58.

44. *Id.* § 14, 9 U.L.A. at 261.

45. *Id.* § 2(h), 9 U.L.A. at 241.

California,<sup>46</sup> Montana,<sup>47</sup> Nevada,<sup>48</sup> Ohio,<sup>49</sup> Oklahoma,<sup>50</sup> and Rhode Island.<sup>51</sup> It superseded the 1985 Act. A directive drafted pursuant to this Act becomes operative when its existence has been communicated to the attending physician and the declarant has been determined to be in a "terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment."<sup>52</sup> A person eighteen or older of sound mind may sign a directive.<sup>53</sup> If there is to be an effective directive, two witnesses must sign the directive.<sup>54</sup> Two optional forms are provided. One contains living will instructions regarding the withholding or withdrawing of life-sustaining treatment.<sup>55</sup> The second allows the designation of an individual to make decisions regarding the withholding or withdrawal of life-sustaining treatment.<sup>56</sup>

A directive can be revoked by the declarant "at any time and in any manner, without regard to the declarant's mental or physical condition."<sup>57</sup> Life-sustaining treatment must not be withdrawn or withheld pursuant to the directive if the declarant is pregnant and it is "probable" that the fetus could be born alive "with continued application of life-sustaining treatment."<sup>58</sup> A power of attorney constitutes a directive under this section, as long as there is a reference in the power of attorney to health care for terminal treatment decisions.<sup>59</sup> If there is no effective health care directive, the Act spells out who may authorize the physician to withhold or withdraw life-sustaining treatment.<sup>60</sup>

A physician who will not comply with the directive must take "all reasonable steps" to transfer care of the declarant to another physician or health care provider.<sup>61</sup> A physician who follows an unrevoked directive is "not subject to civil or criminal liability" or "discipline for unprofessional conduct" if the physician's actions are in accord with "reasonable medical standards."<sup>62</sup> A directive executed in another state

---

46. CAL. HEALTH & SAFETY CODE §§ 7185-7194 (West Supp. 1998).

47. MONT. CODE ANN. §§ 50-9-101 to -206 (1997).

48. NEV. REV. STAT. §§ 449.535-.690 (1997).

49. OHIO REV. CODE ANN. §§ 2133.01-.15 (Banks-Baldwin 1994 and Supp. 1997)

50. OKLA. STAT. ANN. tit. 63, §§ 3101.1-.16 (West 1997).

51. R.I. GEN. LAWS §§ 23-4.11-1 to -14 (1996)

52. UNIF. RIGHTS OF THE TERMINALLY ILL ACT (1989) § 3, 9B U.L.A. 177 (West Supp. 1997).

53. *Id.* § 2(a), 9B U.L.A. at 172.

54. *Id.*

55. *Id.* at 173.

56. *Id.*

57. *Id.* § 4(a), 9B U.L.A. at 178.

58. *Id.* § 6(c), 9B U.L.A. at 179.

59. *Id.* § 2(d), 9B U.L.A. at 174.

60. *Id.* § 7, 9B U.L.A. at 181.

61. *Id.* § 8, 9B U.L.A. at 183.

62. *Id.* § 9(a), (b), 9B U.L.A. at 183.

that meets the requirements of that state or the Uniform Act state is considered valid.<sup>63</sup>

### C. UNIFORM RIGHTS OF THE TERMINALLY ILL ACT (1985)

The Uniform Rights of the Terminally Ill Act (1985) was the precursor to the 1989 Act. It has been adopted and is in effect in Alaska,<sup>64</sup> Arkansas,<sup>65</sup> Iowa,<sup>66</sup> Missouri,<sup>67</sup> Nebraska,<sup>68</sup> and North Dakota.<sup>69</sup> It deals with the requirements for a health care directive limited to living will language. It is narrowly construed to allow an adult to execute "a directive governing the withholding or withdrawal of life-sustaining treatment."<sup>70</sup> It does not address minors, individuals who have not signed a directive, or treatment decisions by proxy.<sup>71</sup> Only a person of sound mind eighteen or older may sign a directive.<sup>72</sup> An optional model form is provided, the signatures of two witnesses are required, and there are no specific restrictions as to who can be a witness.<sup>73</sup>

The directive must be made part of the medical record, and a physician or other health care provider who is unwilling to comply with the directive must "promptly" advise the patient of that unwillingness,<sup>74</sup> and "as promptly as practicable take all reasonable steps to" cooperate in the transfer of the patient to another physician or health care provider.<sup>75</sup> The directive becomes operative when communicated to the attending physician, and the attending physician determines that the patient is in a "terminal condition" and no longer able to make decisions regarding the "administration of life-sustaining treatment."<sup>76</sup> The Act allows for revocation in any manner without regard for the declarant's mental or physical condition.<sup>77</sup> The directive will not have any effect if the patient is known to be pregnant, and it is "probable" that the fetus would be viable with the "continued application of

---

63. *Id.* § 13, 9B U.L.A. at 186.

64. ALASKA STAT. §§ 18.12.01-.100 (Michie 1996 and Supp. 1997).

65. ARK. CODE ANN. §§ 20-17-201 to -218 (Michie 1991 and Supp. 1997).

66. IOWA CODE ANN. §§ 144A.1-.12 (West 1997).

67. MO. ANN. STAT. §§ 459.010-.055 (West 1992).

68. NEB. REV. STAT. §§ 20-401 to -416 (1995).

69. N.D. CENT. CODE 23-06.4-01 to -14 (Michie 1991 and Supp. 1997).

70. UNIF. RIGHTS OF THE TERMINALLY ILL ACT (1985) § 2, 9B U.L.A. 614 (West 1987 & Supp. 1997).

71. Prefatory Notes to UNIF. RIGHTS OF THE TERMINALLY ILL ACT, 9B U.L.A. 609 (West 1987 & Supp. 1997).

72. UNIF. RIGHTS OF THE TERMINALLY ILL ACT § 2(a), 9B U.L.A. at 614.

73. *Id.* § 2, 9B U.L.A. at 614.

74. *Id.* § 2(c), 9B U.L.A. at 614.

75. *Id.* § 7, 9B U.L.A. at 618.

76. *Id.* § 3, 9B U.L.A. at 615.

77. *Id.* § 4, 9B U.L.A. at 616.

life-sustaining treatment," unless the directive otherwise provides.<sup>78</sup> A physician or other health care provider is generally immune from civil or criminal liability or discipline for unprofessional conduct, for his or her actions in accordance with the directive, as long as the actions comply with "reasonable medical standards."<sup>79</sup> Directives that are executed in another state in compliance with laws of that state or with the Uniform Act are valid.<sup>80</sup>

### III. SURVEY OF STATE ACTS

#### ALABAMA

Alabama's law on advanced health care directives was significantly updated in 1997 and is named the "Alabama Natural Death Act."<sup>81</sup> Alabama has not substantially adopted any of the Uniform Acts. Alabama's health directive applies when "the attending physician determines that the declarant is no longer able to understand, appreciate, and direct his or her medical treatment," and "two physicians, one of whom shall be the attending physician, and one of whom shall be qualified and experienced in making such diagnosis," have diagnosed the declarant to have "either a terminal illness or injury, or be in a state of permanent unconsciousness."<sup>82</sup> Only a competent adult, who is defined as any person nineteen or older, may execute the directive which may include living will language and a health care proxy designation.<sup>83</sup> The statutory form of the directive includes a living will section, an appointment of health care proxy section, a section which spells out the document that has final authority if the living will and health care proxy conflict, and a section which includes provisions if the declarant is pregnant.<sup>84</sup> The health care directive form is optional.<sup>85</sup> Two people must witness and sign the directive.<sup>86</sup> The witnesses cannot participate in signing the directive on behalf of the declarant, and they cannot be the appointed health care proxy, be related to the declarant by blood, adoption, or marriage, be entitled to any portion of declarant's estate, or be directly financially responsible for the declarant's health care.<sup>87</sup> The directive can be revoked by the declarant "at any time" by obliterating, burning, tearing, or otherwise

---

78. *Id.* § 6(c), 9B U.L.A. at 617.

79. *Id.* § 8(b), 9B U.L.A. at 619.

80. *Id.* § 12, 9B U.L.A. at 621.

81. ALA. CODE §§ 22-8A-1 to -13 (1997).

82. *Id.* § 22-8A-4(d).

83. *Id.* §§ 22-8A-3(1); -4(a), (b).

84. *Id.* § 22-8A-4(h).

85. *Id.*

86. *Id.* § 22-8A-4(c)(4).

87. *Id.*



defacing or destroying the directive indicating the intention to cancel, or by written or verbal revocation indicating the intention to revoke.<sup>88</sup> The directive has no effect during the course of the pregnancy of the declarant.<sup>89</sup> If the health care provider refuses to comply with the directive, or the directions of a proxy or surrogate decision maker, the provider must promptly advise the appropriate parties and "reasonably cooperate" in transferring the declarant to another health care provider.<sup>90</sup> The health care provider is immune from criminal or civil liability and charges of unprofessional conduct if the provider acts in "good faith" and pursuant to "reasonable medical standards" with the directive or instructions from the designated proxy or surrogate decision maker.<sup>91</sup> The health care directive of another state is valid if it is in compliance with the laws of that state or the laws of Alabama.<sup>92</sup> A health care proxy may be appointed to make "decisions regarding the providing, withholding, or withdrawal of life-sustaining treatment and artificially provided nutrition or hydration."<sup>93</sup> An attorney-in-fact per the "Alabama Durable Power of Attorney Act"<sup>94</sup> may have the authority to make health care decisions if the power of attorney document specifically designates these powers.<sup>95</sup> Any powers granted to a health care proxy to make general health care decisions "not related to the provision, withdrawal or withholding of life-sustaining treatment or artificially provided nutrition or hydration," like an attorney-in-fact to make health care decisions, are limited to the powers listed in the Alabama Durable Power of Attorney Act section 26-1-2.<sup>96</sup> A surrogate health care decision maker may be appointed in accordance with a statutory list of surrogates in order of priority<sup>97</sup> if there is no advanced directive, or no appointed proxy is "reasonably available," or the directive itself "fails to address a particular circumstance."<sup>98</sup> The authority of the surrogate may be challenged using the courts.<sup>99</sup>

---

88. *Id.* § 22-8A-5(1), (2), (3).

89. *Id.* § 22-8A-4(e).

90. *Id.* § 22-8A-8(a).

91. *Id.* § 22-8A-7(c).

92. *Id.* § 22-8A-12.

93. *Id.* § 22-8A-4(b).

94. *Id.* §§ 26-1-2 to -10.

95. *Id.* §§ 22-8A-4(b); 26-1-2(g)(1), (2).

96. *Id.* § 22-8A-4(b)(2).

97. *Id.* § 22-8A-11(a).

98. *Id.*

99. *Id.* § 22-8A-11(j).

## ALASKA

Based on the Uniform Rights of the Terminally Ill Act of 1985, Alaska has adopted the "Living Wills and Do Not Resuscitate Orders" Act.<sup>100</sup> This Act was substantially modified in 1997.<sup>101</sup> For the directive to take "operative effect," the declarant must be in a terminal condition and not able to make treatment decisions.<sup>102</sup> If the directive contains an anatomical gift section, then the gift takes effect upon the death of the declarant.<sup>103</sup> The declarant must be eighteen and competent to execute a declaration directing that life-sustaining procedures be withdrawn or withheld.<sup>104</sup> The directive's language contained in the statute is optional.<sup>105</sup> The statutory form consists of instructions regarding the withholding or withdrawing of life-sustaining treatment and an optional anatomical gift section.<sup>106</sup> If a person signs the declaration at the declarant's direction, he or she must sign the document in the presence of two witnesses or a person qualified to take acknowledgment.<sup>107</sup> The directive may be revoked "at any time and in any manner" without regard to the declarant's mental or physical condition, except as provided for in anatomical gifts.<sup>108</sup> The directive has no effect if the declarant is pregnant, and "it is probable that the fetus could develop to point of live birth with continued application of life-sustaining procedures."<sup>109</sup> A physician who acts in accordance with the requirements of this Act while following a directive is immune from civil or criminal liability or charges of unprofessional conduct.<sup>110</sup> A directive "executed, issued or authorized" in another state will be considered effective in Alaska if it is in compliance with the laws of that state.<sup>111</sup> The "Power of Attorney" Act allows the agent to make decisions regarding health care services, and the power of attorney has optional language to designate if a living will has or has not been executed.<sup>112</sup> The attorney-in-fact may be authorized to enforce a properly executed living will.<sup>113</sup>

---

100. ALASKA STAT. §§ 18.12.010-.100 (Michie 1996 and Supp. 1997).

101. *Id.* §§ 18.12.010-.100.

102. *Id.* § 18.12.010(a).

103. *Id.*

104. *Id.* § 18.12.010.

105. *Id.* § 18.12.010(c).

106. *Id.*

107. *Id.* § 18.12.010(a).

108. *Id.* § 18.12.020.

109. *Id.* § 18.12.040(c).

110. *Id.* § 18.12.060(a).

111. *Id.* § 18.12.090.

112. *Id.* § 13.26.335 (Michie 1996).

113. *Id.* § 13.26.344(l), (3) (Michie 1996).

## ARIZONA

Arizona has not substantially adopted any of the Uniform Acts. Arizona's "Living Will and Health Care Directives Act"<sup>114</sup> regulates both living wills and health care powers of attorney. The optional living will form contains choices that become effective when the person has a "terminal condition," or is in an "irreversible coma," or a "persistent vegetative state."<sup>115</sup> Only an adult may prepare a living will.<sup>116</sup> There is an optional living will form<sup>117</sup> that may be separate from or attached to the optional health care power of attorney form.<sup>118</sup> The living will form contains choices regarding life-sustaining treatment and a provision to add "other or additional statements of desires."<sup>119</sup> An optional sample living will is included in the statute that may be part of the health care power of attorney or separate from it.<sup>120</sup> The declarant's signature on the living will must be witnessed by at least one person or it must be notarized.<sup>121</sup> The notary or witness cannot be a person designated to make medical decisions for the declarant, or a person "directly involved with the provision of health care to the declarant."<sup>122</sup> If there is only one witness, that witness cannot be related to the declarant or be entitled to any part of the declarant's estate.<sup>123</sup> The directive can be revoked by a "written revocation," an "oral revocation," by making a new directive, or by any other act that demonstrates the intent to revoke.<sup>124</sup> The optional living will form allows the declarant to leave instructions in case she is pregnant when the living will is in effect.<sup>125</sup> If a physician fails to comply with the living will because of reasons of conscience, he or she must promptly transfer the responsibility for the declarant's care to another provider who will follow the living will's instructions.<sup>126</sup> If the health care provider makes a medical decision relying in good faith on the health care directive, he or she is immune from civil or criminal liability for these decisions, and is not subject to professional discipline.<sup>127</sup> An out-of-state directive is valid if it was valid at the time and place it was adopted, to the extent that it does not conflict with the

---

114. ARIZ. REV. STAT. ANN. §§ 36-3201 to -3262 (West 1993 & Supp. 1997).

115. *Id.* § 36-3262.

116. *Id.* § 36-3261(A).

117. *Id.* § 36-3261.

118. *Id.* § 36-3221.

119. *Id.* § 36-3262.

120. *Id.* §§ 36-3262, -3224.

121. *Id.* §§ 36-3221(A)(3), -3261(B).

122. *Id.* §§ 36-3221(C)(1), (2); -3261(B).

123. *Id.* §§ 36-3221(D), -3261(B).

124. *Id.* § 36-3202.

125. *Id.* § 36-3262.

126. *Id.* § 36-3205(C)(1).

127. *Id.* § 36-3205(A).

criminal laws of Arizona.<sup>128</sup> An agent designated in a valid health care power of attorney has primary authority to act as the declarant's surrogate decision maker unless a guardian has been appointed by the court for that express purpose.<sup>129</sup> If there is no attorney-in-fact, the legally appointed guardian is deemed to have the authority to make the declarant's health care decisions.<sup>130</sup> If there is no health care power of attorney or court appointed guardian, family members, in the order of priority listed in the statute, have the authority to make health care decisions.<sup>131</sup> Interested individuals may petition the court to determine the validity of a health care directive or the decision of a surrogate decision maker authorized by a health care directive.<sup>132</sup>

#### ARKANSAS

Arkansas has adopted the "Arkansas Rights of the Terminally Ill or Permanently Unconscious Act," which is based on the Uniform Rights of the Terminally Ill Act of 1985.<sup>133</sup> The directive becomes operative when its existence "(i) . . . is communicated to the attending physician and (ii) the declarant is determined by the attending physician and another physician in consultation to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment."<sup>134</sup> Only an individual of sound mind who is eighteen or older may sign a directive.<sup>135</sup> An optional form for the directive is provided.<sup>136</sup> The directive contains instructions regarding life-sustaining treatment and the appointment of a health care proxy.<sup>137</sup> There are two forms: one if the declarant has a terminal condition and one if the declarant is permanently unconscious.<sup>138</sup> Two witnesses must sign the directive.<sup>139</sup> The directive may be revoked "at any time and in any manner by the declarant, without regard to the declarant's mental or physical condition."<sup>140</sup> The directive does not take effect while the declarant is known by the attending physician to be pregnant, and "it is possible that the fetus could develop to the point of live birth with the continued

---

128. *Id.* § 36-3208.

129. *Id.* § 36-3231(A).

130. *Id.*

131. *Id.*

132. *Id.* § 36-3206(A).

133. ARK. CODE ANN. §§ 20-17-201 to -218 (Michie 1991 & Supp. 1997).

134. *Id.* § 20-17-203.

135. *Id.* § 20-17-202(a).

136. *Id.* § 20-17-202(b).

137. *Id.*

138. *Id.* § 20-17-202(b), (c).

139. *Id.* § 20-17-202(a).

140. *Id.* § 20-17-204(a).

application of life-sustaining treatment.”<sup>141</sup> If the physician is unwilling to comply with the directive, he or she must “take all reasonable steps to transfer care of the declarant to another physician.”<sup>142</sup> A person is immune from civil or criminal liability or discipline for unprofessional conduct for carrying out an unrevoked directive.<sup>143</sup> A physician is likewise immune if his or her actions, pursuant to a directive, are in accord with “reasonable medical standards.”<sup>144</sup> Out-of-state directives are recognized in Arkansas as long as they are in compliance with the laws of the state where they are executed or the laws of Arkansas.<sup>145</sup> The form has a provision to appoint a health care proxy to make decisions regarding the withholding or withdrawal of life-sustaining treatment.<sup>146</sup> If no proxy is named, or if the patient has not signed a valid declaration, the parties listed in the statute may execute a directive on behalf of the patient.<sup>147</sup>

#### CALIFORNIA

California regulates living will directives in the “Natural Death Act,”<sup>148</sup> which is a substantial adoption of the Uniform Rights of Terminally Ill Act of 1989.<sup>149</sup> The directive becomes operative when it is communicated to the attending physician and the attending physician, and a second physician who has personally examined the declarant, certify in writing that the declarant is in a “terminal condition” or “permanent unconscious condition” and “no longer able to make decisions regarding administration of life-sustaining treatment.”<sup>150</sup> Only an individual of sound mind, eighteen or over, may sign a living will directive.<sup>151</sup> The form contained in the statute must be substantially followed.<sup>152</sup> The statutory form contains instructions regarding the withholding or withdrawal of life-sustaining treatment.<sup>153</sup> It must be witnessed by two individuals, at least one of whom “is not entitled to any portion of the estate” of the declarant.<sup>154</sup> Also, the witnesses cannot be health care providers, employees of health care providers, the operators

---

141. *Id.* § 20-17-206(c).

142. *Id.* § 20-17-207.

143. *Id.* § 20-17-208(a).

144. *Id.* § 20-17-208(b).

145. *Id.* § 20-17-212.

146. *Id.* § 20-17-202(b), (c).

147. *Id.* § 20-17-214.

148. CAL. HEALTH AND SAFETY CODE §§ 7185-7195 (West Supp. 1998).

149. *Id.* § 7194.5.

150. *Id.* § 7187.5.

151. *Id.* § 7186.5(a).

152. *Id.* § 7186.5(b).

153. *Id.*

154. *Id.* § 7186.5(a).

or employees of a community care facility, or operators or employees of a residential care facility for the elderly.<sup>155</sup> If the declarant is in a skilled nursing facility or a long-term health facility, one of the witnesses must be a "patient advocate" or an "ombudsman."<sup>156</sup> A directive can be revoked "at any time and in any manner" without regard to the "mental or physical condition" of the declarant.<sup>157</sup> The directive has no effect during the time the attending physician knows the declarant is pregnant.<sup>158</sup> If the physician is unwilling to comply with the directive, then he or she must take all "reasonable steps" to transfer the care of the declarant to a physician or health care provider who will follow the directive.<sup>159</sup> A physician, whose actions comport with "reasonable medical standards" and this Act and who follows the instructions of a directive, is not subject to "criminal prosecution, civil liability, discipline for unprofessional conduct," or administrative or other sanctions.<sup>160</sup> A directive executed out-of-state is recognized as valid in California if it was executed in compliance with the laws of that state or the laws of California.<sup>161</sup> An attorney-in-fact may be named in order to make health care, life prolonging care, treatment services, and procedural decisions.<sup>162</sup>

#### COLORADO

Colorado has not substantially adopted any of the Uniform Acts. Its act regulating living wills is the "Colorado Medical Treatment Decision Act."<sup>163</sup> The living will becomes operative when the declarant is in a "terminal condition" and is "either unconscious or otherwise incompetent to decide whether any medical procedure or intervention should be accepted or rejected."<sup>164</sup> Once the declarant has been so certified by the attending physician, and one other physician, the attending physician, "if he or she has actual knowledge of the whereabouts" of a family member, must make a "reasonable effort" to inform family members or the attorney-in-fact named in the health care power of attorney, and wait forty-eight hours to allow challenges to the directive.<sup>165</sup> If no challenge is made, "the attending physician shall then withdraw or withhold all life-sustaining procedures pursuant to the terms of the

---

155. *Id.*

156. *Id.* § 7187.

157. *Id.* § 7188(a).

158. *Id.* § 7189.5(c).

159. *Id.* § 7190.

160. *Id.* § 7190.5(b).

161. *Id.*

162. CAL. PROB. CODE § 4771 (West Supp. 1998)

163. COLO. REV. STAT. §§ 15-18-101 to -113 (1997).

164. *Id.* § 15-18-104(1)

165. *Id.* § 15-18-107

declaration.”<sup>166</sup> Only competent adults eighteen or older may sign a living will directive.<sup>167</sup> The living will contained in the statute is a suggested form that “may, but need not,” be followed.<sup>168</sup> The statutory form contains instructions regarding life-sustaining treatment and artificial nutrition.<sup>169</sup> Two witnesses must sign the directive.<sup>170</sup> The witnesses cannot be fellow patients of the declarant, “the attending physician or any other physician,” “an employee of the attending physician or health care facility,” or a person who has a claim against the declarant’s estate or is entitled “to any portion of the estate of the declarant.”<sup>171</sup> The declarant may revoke the directive “orally, in writing, or by burning, tearing, canceling, obliterating, or destroying said directive.”<sup>172</sup> The directive has no effect if the declarant is known by the attending physician to be pregnant with a viable fetus, and the fetus “could with a reasonable degree of medical certainty develop to live birth with continued application of life-sustaining procedures.”<sup>173</sup> If the physician is unwilling to comply with the directive, he or she must transfer care of the declarant to another physician, and failure to transfer constitutes unprofessional conduct.<sup>174</sup> No physician withdrawing or withholding life-sustaining procedures in compliance with the directive is subject to “civil liability, criminal penalty, or licensing sanctions.”<sup>175</sup> If there is no one with the authority to make health care decisions, the individuals listed in the statute may select a surrogate decision maker by consensus.<sup>176</sup> Interested parties may challenge the validity of the directive in court.<sup>177</sup> A person may name an attorney-in-fact to make his or her health care decisions, including decisions regarding consenting to or refusing medical treatment.<sup>178</sup>

#### CONNECTICUT

Connecticut has not substantially adopted any of the Uniform Acts. Its act regulating living wills is the “Removal of Life Support Systems”

---

166. *Id.*

167. *Id.* §§ 15-18-103(1), -104(1)

168. *Id.* §15-18-104(3)

169. *Id.*

170. *Id.* § 15-18-106(1).

171. *Id.* §§ 15-18-105 to -106(1), (2).

172. *Id.* § 15-18-109.

173. *Id.* § 15-18-104(2).

174. *Id.* § 15-18-113(5).

175. *Id.* § 15-18-110(1)(b).

176. *Id.* § 15-18.5-103(1), (4).

177. *Id.* § 15-18-108(1).

178. *Id.* § 15-14-506 (1997). See generally Patient Autonomy Act, COLO. REV. STAT. §§ 15-14-501 to -509 (1997).

Act.<sup>179</sup> The living will becomes operative "when the document is furnished to the attending physician," and the attending physician determines the declarant to be "incapacitated."<sup>180</sup> Only a person eighteen or older may execute a living will directive.<sup>181</sup> The living will "shall contain directions as to specific life support systems" and may be substantially in the form provided in the statute.<sup>182</sup> The form has instructions for withholding or withdrawing life-sustaining treatment.<sup>183</sup> Another suggested form contains these treatment instructions, in addition to instructions appointing a health care agent and an attorney-in-fact, and designating a conservator and an anatomical gift.<sup>184</sup> Two witnesses must sign the form.<sup>185</sup> The living will may be revoked "at any time and in any manner by the declarant without regard to the declarant's mental or physical condition."<sup>186</sup> The directive has no effect while the declarant is pregnant.<sup>187</sup> If the physician is unwilling to follow the living will directive, he or she shall "take all reasonable steps to transfer care of the patient to a physician or health care provider who will comply with the wishes of the patient" and the requirements of the Act.<sup>188</sup> Before withholding or withdrawing life support, the physician must make reasonable efforts to notify the declarant's health care agent, next of kin, and legal guardian or conservator.<sup>189</sup>

A person is generally immune from criminal or civil liability or charges of unprofessional conduct for following the instructions of a living will if he or she has met the requirements of the Act and is not aware that it has been revoked.<sup>190</sup> A health care agent can be named to make health care decisions regarding the withholding or removal of life support systems.<sup>191</sup> If no living will was signed, the physician may consider any statements made to him or her by the declarant and may consult with the patient's health care agent, next of kin, legal guardian or conservator, or other person to whom the patient spoke about health care wishes.<sup>192</sup> The probate court where the declarant is domiciled has juris-

---

179. CONN. GEN. STAT. §§ 19a-570 to -580d (1997).

180. *Id.* § 19a-579.

181. *Id.* § 19a-575.

182. *Id.*

183. *Id.*

184. *Id.* § 19a-575(a).

185. *Id.* § 19a-575.

186. *Id.* § 19a-579a(a).

187. *Id.* § 19a-574.

188. *Id.* § 19a-580a.

189. *Id.* § 19a-580.

190. *Id.* § 19a-579a(c).

191. *Id.* § 19a-577(a).

192. *Id.* § 19a-571(a).



diction to resolve disputes.<sup>193</sup> The Act contains a suggested form that names the same person as the health care agent and the attorney-in-fact to make health care decisions.<sup>194</sup>

#### DELAWARE

Delaware has adopted a version of the Uniform Health Care Decisions Act with a number of changes.<sup>195</sup> It is called the "Delaware Death with Dignity Act."<sup>196</sup> The living will portion of the directive becomes effective when the declarant lacks "capacity" and has been certified by the attending physician and one other qualified physician to have a "terminal condition" or to be "permanently unconscious."<sup>197</sup> Only an adult who is mentally competent may sign an advanced health care directive.<sup>198</sup> An optional advanced health care directive form is included in the statute.<sup>199</sup> The first part designates a power of attorney for health care.<sup>200</sup> The second part is the living will portion of the form and has instructions for the agent if the declarant has a terminal condition or is permanently unconscious.<sup>201</sup> The third part is an optional form for anatomical gifts,<sup>202</sup> and the fourth part is also optional and allows for the designation of a primary physician.<sup>203</sup> The directive must be in writing and signed by two witnesses.<sup>204</sup> The witnesses cannot be related to the declarant, be entitled to a portion or have an interest in the declarant's estate, be directly financially responsible for the declarant's medical care, or have a controlling interest in or be an employee of a facility where the declarant is a patient or resident.<sup>205</sup> If the declarant is a resident of a nursing home, one of the witnesses must be an ombudsman or a patient advocate.<sup>206</sup>

The directive may be revoked by a "signed writing" or in any other manner "that communicates an intent to revoke" in the presence of two competent individuals, one of whom is a health care provider.<sup>207</sup>

---

193. *Id.* § 19a-580c.

194. *Id.* § 19a-575

195. DEL. CODE ANN. tit. 16, §§ 2501-2517 (Michie 1995 and Supp. 1996).

196. *Id.* §§ 2501-2509.

197. *Id.* §§ 2501(r), -2503(c).

198. *Id.* § 2503(a).

199. *Id.* § 2505.

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.* § 2503(b)(1).

205. *Id.*

206. *Id.* § 2511(b).

207. *Id.* § 2504.

The directive to remove life-sustaining treatment has no effect if the declarant is known to be pregnant, "so long as it is probable that the fetus will develop to be viable outside the uterus with the continued application of a life-sustaining procedure."<sup>208</sup> If a health care provider declines to follow a directive, then he or she must inform the declarant or the declarant's agent, continue to provide care until a transfer can be made, and "not impede the transfer of the declarant to another health care provider or institution."<sup>209</sup> A health care provider acting in "good faith" and in "accordance with generally accepted health care standards" is not subject to civil or criminal liability or discipline for unprofessional conduct for following a directive.<sup>210</sup> An out-of-state directive executed in compliance with the laws of that state or the state of Delaware is valid in Delaware.<sup>211</sup> If there is no named health care agent or legal guardian, or if the directive's instructions do not address a specific issue, a surrogate may make health care decisions on behalf of a declarant.<sup>212</sup> If the declarant cannot designate someone, the individuals described in the statute may be the surrogates.<sup>213</sup> An interested person may petition the "Court of Chancery" to challenge a directive.<sup>214</sup> An attorney-in-fact for health care may be named to have the authority to make any health care decisions.<sup>215</sup>

#### FLORIDA

Florida has not substantially adopted any of the Uniform Acts. Its act is the "Health Care Advance Directives Act."<sup>216</sup> The directive applies when the attending or treating physician and one other consulting physician determine in writing that the declarant has a "terminal condition" and does not have the "capacity" to make his or her own health care decisions or a "reasonable probability of recovering competency."<sup>217</sup> Only a competent adult may make a living will.<sup>218</sup> There is an optional form contained in the statute.<sup>219</sup> It has instructions regarding life-sustaining treatment and the naming of a surrogate to make

---

208. *Id.* § 2503(j).

209. *Id.* § 2508(g).

210. *Id.* § 2510(a)(3).

211. *Id.* § 2517.

212. *Id.* § 2507(a).

213. *Id.* § 2507(b)(2).

214. *Id.* § 2511(a).

215. *Id.* § 2503(a)(2).

216. FLA. STAT. ANN. §§ 765.101-.401 (West 1997 & Supp. 1998).

217. *Id.* §§ 765.304(2), -765.306.

218. *Id.* § 765.302(1).

219. *Id.* § 765.303.

decisions regarding life-sustaining treatment.<sup>220</sup> The declarant's signature must be witnessed by two people, neither of whom can be a spouse or blood relative of the declarant.<sup>221</sup> A "signed, dated writing" or oral "expression of intent to revoke," "physical cancellation" or "destruction" of the directive, or the execution of a new directive that is "materially different" from the previous directive, revokes the directive.<sup>222</sup> The revocation is effective when it is communicated to the "surrogate, health care provider, or health care facility."<sup>223</sup> Without court approval or authorization from the declarant, a surrogate or proxy cannot withhold or withdraw life-prolonging procedures from a pregnant declarant prior to "viability" as defined in the statute.<sup>224</sup>

A physician who refuses to comply with a directive shall make "reasonable efforts" to transfer the patient to another physician who will comply with the directive.<sup>225</sup> A physician is immune from civil or criminal liability or charges of unprofessional conduct for following a directive made in accordance with the Act.<sup>226</sup> Out-of-state directives are valid in Florida if executed in compliance with the laws of either state.<sup>227</sup> A health care surrogate may be named in the living will<sup>228</sup> or in a separate form.<sup>229</sup> The surrogate named in the living will form appears to be able to make decisions after the declarant is found to lack capacity and to be in a terminal condition.<sup>230</sup> However, a surrogate named using the "designation of health care surrogate" form appears to have the authority when the declarant is incapacitated, regardless of whether he or she is terminal.<sup>231</sup> If no health care surrogate is named, a "proxy" in the listed order of priority has the authority to make health care decisions.<sup>232</sup> Interested parties may "seek expedited judicial intervention" of the Probate Court to review the directive.<sup>233</sup>

---

220. *Id.*

221. *Id.* § 765.302(1).

222. *Id.* § 765.104(1).

223. *Id.* § 765.104(3).

224. *Id.* § 765.113(2).

225. *Id.* § 765.308(1).

226. *Id.* § 765.109(1).

227. *Id.* § 765.112.

228. *Id.* § 765.303.

229. *Id.* § 765.203.

230. *Id.* § 765.303.

231. *Id.* § 765.203.

232. *Id.* § 765.401.

233. *Id.* § 765.105.

## GEORGIA

Georgia has not substantially adopted any of the Uniform Acts. Its act is the "Living Wills Act."<sup>234</sup> The directive applies when the declarant has a "terminal condition," is in a "coma," or is in a "persistent vegetative state."<sup>235</sup> Only a competent adult may sign a living will.<sup>236</sup> A directive similar to the form listed in the statute is presumed to be valid.<sup>237</sup> The statutory form contains instructions regarding life-sustaining treatment.<sup>238</sup> The declarant's signature must be witnessed by two adults, neither of whom is related to declarant, has an interest in or claim to the declarant's estate, is the attending physician or employee of the attending physician, or employee of the health care provider or skilled nursing facility, or is directly financially responsible for the declarant's care.<sup>239</sup> If the living will is signed in a hospital or nursing home, a third witness is required.<sup>240</sup> The directive may be revoked by the declarant without regard to declarant's "mental state or competency," by being "canceled, defaced, obliterated, burnt, torn, or otherwise destroyed," by written revocation, or by "verbal or nonverbal expression" of the intent to revoke.<sup>241</sup>

Before a physician can follow a living will, he or she must determine that the declarant is not pregnant.<sup>242</sup> If a declarant is pregnant, and she wants the living will to be effective during her pregnancy, the living will must state that fact.<sup>243</sup> If the physician refuses to follow the living will, he or she must notify the legal guardian or next of kin of that refusal.<sup>244</sup> Then, if the guardian or family member agrees, the physician must make a good faith attempt to transfer the patient to a physician who will follow the directive.<sup>245</sup> A physician who follows the requirements of this Act "in good faith" is immune from civil or criminal liability as well as any charges of unprofessional conduct.<sup>246</sup> If a durable power of attorney for health care gives an agent authority regarding the withdrawal or withholding of life-sustaining or death delaying treatment, the living will

---

234. GA. CODE ANN. §§ 31-32-1 to -12 (1996).

235. *Id.* § 31-32-3(b)(1).

236. *Id.* § 31-32-3(a).

237. *Id.* § 31-32-3(b).

238. *Id.*

239. *Id.* § 31-32-3(a).

240. *Id.* § 31-32-4.

241. *Id.* § 31-32-5(a).

242. *Id.* § 31-32-8(a)(1).

243. *Id.*

244. *Id.* § 31-32-8(b).

245. *Id.* § 31-32-8(b)(1), (2).

246. *Id.* § 31-32-7(a).

directive is ineffective unless the health care power of attorney states otherwise.<sup>247</sup>

## HAWAII

Hawaii has not substantially adopted any of the Uniform Acts. Its act is the "Medical Treatment Decisions Act."<sup>248</sup> Hawaii's living will directive takes effect when the declarant develops a "terminal condition," or "permanent loss of the ability to communicate regarding treatment decisions with no reasonable chance to regain this ability."<sup>249</sup> Only a competent person eighteen or over may sign the directive.<sup>250</sup> There is a suggested form in the statute<sup>251</sup> which contains instructions regarding the withholding or withdrawal of life-sustaining procedures.<sup>252</sup> Two witnesses must sign the directive, and all signatures must be notarized.<sup>253</sup> The witnesses must be at least eighteen years of age, cannot be related to the declarant, must be the attending physician or other health care worker treating the declarant, or must be employees of the attending physician or health care facility where the declarant is a patient.<sup>254</sup> The form can be revoked by being "canceled, defaced, obliterated, burnt torn," or "destroyed," or by written or verbal revocation.<sup>255</sup>

The directive has no effect during the declarant's pregnancy as diagnosed by the attending physician.<sup>256</sup> If the attending physician refuses to honor the directive "because of personal beliefs or conscience," he or she must make the arrangements necessary in order to transfer the declarant to another physician.<sup>257</sup> The attending physician, including his or her subordinates, is immune from civil or criminal liability or charges of unprofessional conduct for following an unrevoked directive.<sup>258</sup> Out-of-state directives are honored if the directive and the execution of the directive substantially complies with Hawaii's statutory requirements.<sup>259</sup> An attorney-in-fact can make health care decisions for the declarant if the power to make health care decisions, and the authority to make decisions regarding life-prolonging treatment, is explicitly granted in the

---

247. *Id.* § 31-32-11(d).

248. HAW. REV. STAT. §§ 327D-1 to -27 (1993).

249. *Id.* § 327D-4.

250. *Id.* § 327D-3.

251. *Id.* § 327D-4.

252. *Id.*

253. *Id.* § 327D-3(b)(4), (5).

254. *Id.* § 327D-3(b)(4).

255. *Id.* § 327D-12.

256. *Id.* § 327D-6.

257. *Id.* § 327D-11(b).

258. *Id.* § 327D-18.

259. *Id.* § 327D-25.

document.<sup>260</sup> In 1997, a bill was enacted that authorizes the appointment of a legal surrogate for health care decisions for any person who is no longer able to make and communicate health care decisions, resides in a nursing or intermediate health care facility, and has not executed a health care directive.<sup>261</sup>

If there is no valid directive and the patient does not meet the requirements of the new laws, the physician is to follow ordinary standards of current medical practice and may consider any consistent, verbal statements made by the declarant.<sup>262</sup> A health care attorney-in-fact may be named, but the authority to decide if the declarant's life is to be prolonged must be spelled out specifically in the document.<sup>263</sup>

#### IDAHO

Idaho has not substantially adopted any of the Uniform Acts. Its act governing living wills is the "Natural Death Act."<sup>264</sup> The living will applies when two medical doctors have diagnosed the declarant to be in a condition certified to be "terminal" or a "persistent vegetative state," or the declarant has an "incurable injury, disease or illness" and is unable to communicate his or her wishes.<sup>265</sup> Only a competent person eighteen or older may execute a living will.<sup>266</sup> The statute provides a suggested directive, but another form may be used if it contains the elements of the suggested directive.<sup>267</sup> The suggested directive contains instructions regarding life-sustaining treatment and the appointment of an attorney-in-fact for health care or proxy.<sup>268</sup>

The suggested living will directive has a space for the signatures of two witnesses.<sup>269</sup> A suggested companion durable power of attorney form is contained in the Act.<sup>270</sup> The living will can be revoked without regard to declarant's "mental state or competence" by being "canceled, defaced, obliterated, burned, torn, destroyed," or by written or verbal revocation.<sup>271</sup> If the declarant is pregnant, the living will has no force or effect during the pregnancy.<sup>272</sup> If the physician is unwilling to

---

260. *Id.* §§ 551D-2.5, -2.6 (Michie 1993).

261. H.B. 631, 19th Leg. (Haw. 1997) (repealed 1999).

262. HAW. REV. STAT. § 327D-21.

263. *Id.* §§ 551D-2.5, -2.6.

264. IDAHO CODE §§ 39-4501 to -4509.

265. *Id.* § 39-4504.

266. *Id.* §§ 39-4503(2), -4504.

267. *Id.* § 39-4504.

268. *Id.*

269. *Id.*

270. *Id.* § 39-4505.

271. *Id.* § 39-4506.

272. *Id.* § 39-4504(4).

comply with the directive for "ethical or professional reasons," he or she must make a "good faith" effort to assist the declarant in obtaining the services of another physician or health care provider.<sup>273</sup> A physician is immune from civil or criminal liability for following a living will.<sup>274</sup> The living will form allows for the naming of an attorney-in-fact/health care proxy.<sup>275</sup> If one is named, a health care power of attorney must also be executed.<sup>276</sup>

### ILLINOIS

Illinois has not substantially adopted any of the Uniform Acts. Its act regulating living wills is the "Illinois Living Will Act."<sup>277</sup> The living will applies when the attending physician has determined that the declarant suffers from a "terminal condition" and death is imminent.<sup>278</sup> Only a person of sound mind eighteen or older or an emancipated person may sign a living will.<sup>279</sup> The directive in the statute is optional.<sup>280</sup> The declarant's signature on the living will must be witnessed by two people neither of whom is entitled to any portion of the declarant's estate, or is directly financially responsible for the declarant's medical care.<sup>281</sup> The living will may be revoked "without regard to declarant's mental or physical condition" by being "obliterated, burnt, torn," or otherwise "destroyed," or "defaced," or by written or oral revocation or other expression of intent to revoke.<sup>282</sup> If the physician is unwilling to comply with the living will, it is the declarant's responsibility to effectuate transfer to another physician.<sup>283</sup> If the declarant is unable to transfer himself or herself, the physician must contact the individuals listed in order of priority in the statute.<sup>284</sup>

A physician who follows the living will in "good faith" and in accordance with "reasonable medical standards" is immune from civil or criminal liability or discipline for unprofessional conduct.<sup>285</sup> A directive that is not executed in Illinois is valid in Illinois if it is in

---

273. *Id.* § 39-4508.

274. *Id.*

275. *Id.* § 39-4504(2).

276. *Id.*

277. 755 ILL. COMP. STAT. 35/1-10 (West 1992 & Supp. 1998).

278. *Id.* 35/3(e).

279. *Id.* 35/3(a).

280. *Id.* 35/3(e).

281. *Id.*

282. *Id.* 35/5.

283. *Id.* 35/3(d).

284. *Id.*

285. *Id.* 35/7.

compliance with the laws of that state or Illinois.<sup>286</sup> If no health care agent is named in a health care power of attorney, the parties listed are authorized to make health care decisions regarding the withholding or withdrawal of life-sustaining treatment.<sup>287</sup> The declarant may appoint an attorney-in-fact who is authorized to make decisions regarding the withholding or withdrawal of life-sustaining measures.<sup>288</sup>

## INDIANA

Indiana has not substantially adopted any of the Uniform Acts. Its act is the "Living Wills and Life Prolonging Procedures Act."<sup>289</sup> The Act has two separate forms: The "Living Will Declaration," which provides for withholding or withdrawing life-sustaining procedures and receiving or not receiving artificially supplied nutrition and hydration,<sup>290</sup> and the "Life Prolonging Procedures Declaration," which specifically requests the use of life prolonging procedures.<sup>291</sup> The directives apply after the attending physician has diagnosed the patient as having a "terminal condition," and the patient has executed a "living will declaration or a life prolonging procedures will declaration."<sup>292</sup> Only a competent person, eighteen or older, may sign a directive.<sup>293</sup> The "Living Will Declaration" and the "Life Prolonging Procedures Declaration" must be in substantially the same form as set forth in the statutes, but additional specific directions may be added.<sup>294</sup> Two witnesses must sign the forms.<sup>295</sup> The witnesses cannot be a person who signed on behalf of the declarant, a parent, spouse, or child of the declarant, be entitled to portion of declarant's estate, or be directly financially responsible for the declarant's medical care.<sup>296</sup> The form can be revoked in "writing," by "physical cancellation or destruction," or orally.<sup>297</sup> The living will directive has no effect during pregnancy as diagnosed by the attending physician.<sup>298</sup>

A physician who refuses to follow the instructions in the directives must transfer the declarant to another physician, unless the physician

---

286. *Id.* 35/9(h).

287. *Id.* 40/25 (West 1992 & Supp. 1998).

288. *Id.* 45/4-1 to -12 (West 1992).

289. IND. CODE ANN. §§ 16-36-4-1 to -21 (Michie 1993 & Lexis Supp. 1998).

290. *Id.* § 16-36-4-10.

291. *Id.* § 16-36-4-11.

292. *Id.* § 16-36-4-13(a).

293. *Id.* §§ 16-36-4-6 to -8.

294. *Id.* § 16-36-4-9.

295. *Id.* § 16-36-4-8(b)(5).

296. *Id.* § 16-36-4-8(c).

297. *Id.* § 16-36-4-12(a).

298. *Id.* § 16-36-4-8(d).



believes that the directive is invalid, the declarant no longer intends to enforce the directive, or the declarant cannot presently validate the directive.<sup>299</sup> The physician must consult with the appointed guardian, or designated proxy, or family to determine the declarant's intent if the physician is refusing to follow the directive.<sup>300</sup> If the physician acts in "good faith" and in accordance with "reasonable medical standards," then the physician is immune from criminal or civil liability and charges of unprofessional conduct.<sup>301</sup> A health care representative can be appointed to consent to the health care of another pursuant to Indiana Code Annotated § 16-36-1-7(a).<sup>302</sup> An attorney-in-fact with health care powers can make health care decisions including providing for nutrition and hydration.<sup>303</sup>

### IOWA

Iowa has substantially adopted the 1985 version of "The Uniform Rights of the Terminally Ill Act," naming it the "Life-sustaining Procedures Act."<sup>304</sup> The directive goes into effect when the declarant's condition has been determined by the attending physician to be terminal, and the declarant is unable to make "treatment decisions."<sup>305</sup> Only a competent adult may sign a living will.<sup>306</sup> The Act contains a short, one paragraph description of a suggested living will.<sup>307</sup> The statutory form of the directive contains instructions regarding the withholding or withdrawing of life-sustaining treatment.<sup>308</sup> The directive must be notarized and signed by two witnesses, at least eighteen years of age, not more than one of whom can be a relative of the declarant, and neither of whom can be a health care provider or an employee of the health care provider for the declarant.<sup>309</sup> The directive can be revoked "at any time and in any manner" that the declarant is able to communicate his or her intent to revoke "without regard to [the] mental or physical condition" of the declarant.<sup>310</sup> The revocation must be communicated to the attending physician to be effective.<sup>311</sup> The living will has no effect while

---

299. *Id.* § 16-36-4-13(e).

300. *Id.* § 16-36-4-13(g).

301. *Id.* § 16-36-4-13(d).

302. *Id.* §§ 16-36-1-1 to -14.

303. *Id.* § 30-5-2-4 (Lexis Supp. 1998).

304. IOWA CODE ANN. §§ 144A.1-.12 (West 1997).

305. *Id.* §§ 144A.2(8), -144A.3(1).

306. *Id.* § 144A.3(1).

307. *Id.* § 144A.3(5).

308. *Id.*

309. *Id.* § 144A.3(2)(a), (b).

310. *Id.* § 144A.4(1).

311. *Id.*

the declarant is known by the attending physician to be pregnant and the fetus is viable and "could develop to the point of live birth with continued application of life-sustaining treatment."<sup>312</sup> If the physician is unwilling to comply with the living will, he or she must take "all reasonable steps" to transfer the patient to another physician.<sup>313</sup> A physician who acts in compliance with this Act and pursuant to a living will is not subject to civil or criminal liability or charges of unprofessional conduct.<sup>314</sup> An out-of-state directive in compliance with the laws of that state is valid in Iowa to the extent that it is consistent with the laws of Iowa.<sup>315</sup> If no directive exists, individuals listed in the statute have the authority to make decisions regarding the withholding or withdrawal of life-sustaining treatment.<sup>316</sup> An attorney-in-fact may be authorized to make health care decisions including those related to life-sustaining procedures.<sup>317</sup>

#### KANSAS

Kansas has not substantially adopted any of the Uniform Acts. Its act is the "Natural Death Act."<sup>318</sup> The living will is operative when two physicians "who have personally examined the patient," and one of whom is the attending physician, have diagnosed the declarant with a terminal condition.<sup>319</sup> Only an adult person may execute a directive.<sup>320</sup> The directive should be in substantially the same form as listed in the statute, but additional directions may be added.<sup>321</sup> The directive must be in writing and it must be signed by the declarant. In addition, the directive must be witnessed by two individuals who are eighteen years or older, neither of whom signed the directive on behalf of the declarant, are related to the declarant, are entitled to a portion of the declarant's estate, or are "directly financially responsible for the declarant's medical care."<sup>322</sup>

Instead of two witnesses, the declarant's signature may be acknowledged in front of a notary.<sup>323</sup> The directive may be revoked at any time by being "obliterated, burnt, torn, destroyed," or "defaced" in a man-

---

312. *Id.* § 144A.6(2).

313. *Id.* § 144A.8(1).

314. *Id.* § 144A.9(1).

315. *Id.* § 144A.3(4).

316. *Id.* § 144A.7.

317. *Id.* § 145B.5 (West 1997).

318. KAN. STAT. ANN. §§ 65-28,101 to -28,109 (1992 & Supp. 1997).

319. *Id.* § 65-28,102(e).

320. *Id.* § 65-28,103(a).

321. *Id.* § 65-28,103(c).

322. *Id.* § 65-28,103(a).

323. *Id.*

ner indicating intent to cancel, or by written or oral revocation expressing the intent to revoke.<sup>324</sup> The directive has no effect during the pregnancy of the declarant.<sup>325</sup> If the attending physician refuses to comply with the directive, he or she must "effect the transfer" of the declarant to another physician.<sup>326</sup> A physician acting in "good faith" and in accordance with the Act and pursuant to "reasonable medical standards" will not be found criminally or civilly liable, or be subject to discipline for unprofessional conduct for following a directive.<sup>327</sup> A durable power of attorney may authorize an attorney-in-fact to make health care decisions on behalf of the declarant.<sup>328</sup>

#### KENTUCKY

Kentucky has not substantially adopted any of the Uniform Acts. Its act is the "Kentucky Living Will Directive Act."<sup>329</sup> The living will directive applies when the declarant lacks "decisional capacity" and has a "terminal condition" as diagnosed by "the attending physician and one (1) other physician."<sup>330</sup> Only an adult, eighteen or older, with "decisional capacity" may sign a living will.<sup>331</sup> A form is provided in the Act that must be substantially followed, but additional directions may be added that are "in accordance with accepted medical practice and not specifically prohibited by any other statute."<sup>332</sup> The directive contains instructions regarding life-sustaining procedures, and the appointment of a surrogate decision maker.<sup>333</sup> The declarant's signature on the directive must be witnessed by two people or notarized.<sup>334</sup> No witness can be related by blood to the declarant, be a beneficiary of the declarant, be an employee of the health care facility where the declarant is a patient unless the employee serves as a notary public, be the attending physician of the declarant, or be directly financially responsible for the declarant's medical care.<sup>335</sup>

The directive may be revoked by a signed and dated writing, declaring the intent to revoke, by an oral statement of the intent to

---

324. *Id.* § 65-28,104(a).

325. *Id.* § 65-28,103(a).

326. *Id.* § 65-28,107(a).

327. *Id.* § 65-28,106.

328. *Id.* § 58-629 (1994).

329. KY. REV. STAT. ANN. §§ 311.621-.643 (Michie 1995)

330. *Id.* §§ 311.621(5), (16); -311.625(1)

331. *Id.* §§ 311.621(1), -.623(1).

332. *Id.* § 311.625(1).

333. *Id.*

334. *Id.* § 311.625(2).

335. *Id.*

revoke, or by the destruction of the directive.<sup>336</sup> The directive has no effect during the declarant's pregnancy unless the attending physician and one other physician certify "to a reasonable degree of medical certainty" that the life-sustaining procedures will not lead to the live birth of a child, or will be "physically harmful to the women or prolong severe pain which cannot be alleviated by medication."<sup>337</sup> If the physician refuses to comply with the directive, he or she must inform the patient or the patient's agent of the refusal and not impede the transfer of the declarant to another physician.<sup>338</sup> A physician who follows a directive in compliance with the Act is immune from civil or criminal liability or charges of unprofessional conduct.<sup>339</sup> A surrogate for health care decision making may be named in the living will.<sup>340</sup> The surrogate may make decisions regarding the withdrawal or withholding of artificial nutrition and hydration if the proper conditions are met, and all other decisions the declarant could make regarding health care if the declarant had decision making capacity.<sup>341</sup> If a directive does not name a surrogate or the directive is otherwise ineffective, the individuals listed in order in the statute may make health care decisions for the person lacking decision making capacity.<sup>342</sup>

#### LOUISIANA

Louisiana has not substantially adopted any of the Uniform Acts. Its act is the "Natural Death Act."<sup>343</sup> It applies when two physicians, one of whom is the attending physician, have diagnosed the declarant as having a "terminal and irrecoverable condition."<sup>344</sup> Only an adult person or an adult acting on behalf of a minor who has been certified as a "qualified patient" can sign a directive.<sup>345</sup> The form contained in the statute is optional and only discusses the withdrawal or withholding of life-sustaining procedures.<sup>346</sup> The directive can be "an oral or non oral declaration."<sup>347</sup> The declarant's signature on the written directive must be witnessed by two competent adults, neither of whom is related to

---

336. *Id.* § 311.627(1), (2).

337. *Id.* § 311.629(4).

338. *Id.* § 311.633(2).

339. *Id.* § 311.635(1).

340. *Id.* § 311.625(1).

341. *Id.* § 311.629(1), (3).

342. *Id.* § 311.631(1).

343. LA. REV. STAT. ANN. §§ 40-1299.58.1 to -1299.58.10 (West 1992).

344. *Id.* § 40-1299.58.3(A)(1).

345. *Id.* §§ 40-1299.58.3(A)(1), -.6(a).

346. *Id.* § 40-1299.58.3(C)(1).

347. *Id.* § 40-1299.58.3(A)(3).

declarant by blood or marriage nor is entitled to any portion of the declarant's estate.<sup>348</sup>

The directive can be revoked at any time without regard to the declarant's mental state or competency by being "canceled, defaced, obliterated, burned, torn," or otherwise "destroyed," or by written, oral or nonverbal expression of the intent to revoke.<sup>349</sup> If a physician will not comply with directive, the physician must make "a reasonable effort" to transfer the declarant to another physician.<sup>350</sup> A physician is not subject to criminal prosecution, civil liability, or claims of having engaged in unprofessional conduct for following a directive in accordance with this Act.<sup>351</sup> If no directive was executed, individuals listed in the statute can make health care decisions on behalf of the patient.<sup>352</sup> A power of attorney may grant the authority to make health care decisions, but the authority to make decisions regarding surgery, medical expenses, nursing home residency, or medication must be expressly stated.<sup>353</sup>

#### MAINE

Maine has substantially adopted the Uniform Health-Care Decisions Act.<sup>354</sup> The declarant can give oral or written health care instructions, but oral instructions are only valid if given to a health care provider or a surrogate decision maker.<sup>355</sup> Unless otherwise specified in a health care power of attorney, the agent's authority becomes effective on the determination "that the principal lacks capacity."<sup>356</sup> Unless the advanced health care directive says otherwise, the declarant's primary physician or a court determines capacity.<sup>357</sup> The advanced health care directive may be limited in that it would take effect solely when a specific health related condition arises.<sup>358</sup> Only an adult or an emancipated minor may sign a directive.<sup>359</sup> The form contained in the statute is optional: Part one appoints a health care agent, part two contains living will instructions, part three contains organ donation language, and part four contains a primary physician designation.<sup>360</sup>

---

348. *Id.* § 40-1299.58.2 (11).

349. *Id.* § 40-1299.58.4.

350. *Id.* § 40-1299.58.7 (B).

351. *Id.* § 40-1299.58.8(A)(2).

352. *Id.* § 40-1299.58.5(A)(2).

353. LA. CIV. CODE. ANN. art. 2997 (1996).

354. ME. REV. STAT. ANN. tit. 18-A, §§ 5-801 to -817.

355. *Id.* § 5-802(a).

356. *Id.* § 5-802(c).

357. *Id.* § 5-802(d).

358. *Id.* § 5-802(a).

359. *Id.* § 5-802(a).

360. *Id.* § 5-804.

The advanced health care directive form contains a space for the signatures of two witnesses.<sup>361</sup> Revocation of the directive can only be made by a "signed writing, or by personally informing the supervising health care provider," or by executing a new directive that conflicts with the earlier directive.<sup>362</sup>

A physician may decline to follow the directive for "reasons of conscience," if the directive is "not in compliance" with the provisions of the Act, if the directive's instructions are contrary to a policy of the institution, or if its instructions constitute medically ineffective care.<sup>363</sup> If the physician declines to comply with the directive, the physician must make all "reasonable efforts" to transfer the declarant to another health care provider or institution.<sup>364</sup> A physician is generally immune from both civil and criminal charges, as well as sanctions for unprofessional conduct if they are acting in "good faith" and in accordance with "generally accepted health care standards" when following the directive.<sup>365</sup> Out-of-state directives are considered valid if they comply with this Act or are valid under the laws of the state where the directive was executed.<sup>366</sup> Maine, under the "Durable Power of Attorney Act,"<sup>367</sup> also allows a health care power of attorney to name an agent who has the authority to give or withhold consent to or approval of any medical, health, or other professional care including life-sustaining treatment.<sup>368</sup> The "Uniform Health Care Decisions Act" also expressly authorizes a power of attorney for health care that must be in writing and signed by two witnesses.<sup>369</sup> If no one is named as an agent, the legal guardian and the family members in named order of priority may make health care decisions as the surrogate decision maker.<sup>370</sup> Interested parties may also petition the appropriate court to enjoin or direct a health care decision.<sup>371</sup>

#### MARYLAND

Maryland has not substantially adopted any of the Uniform Acts. Its act is the "Health Care Decision Act."<sup>372</sup> The advanced directive

---

361. *Id.* § 5-804(d).

362. *Id.* § 5-803(a), (e).

363. *Id.* § 5-807(e), (f).

364. *Id.* § 5-807(g)(3).

365. *Id.* § 5-809.

366. *Id.* § 5-802(h).

367. *Id.* §§ 5-501 to -508.

368. *Id.* § 5-506(a).

369. *Id.* § 5-802(b).

370. *Id.* § 5-805(a), (c).

371. *Id.* § 5-814.

372. MD. CODE ANN., HEALTH-GEN. I §§ 5-601 to -618 (Michie 1994 & Supp. 1997).

becomes effective when the "attending physician and a second physician certify in writing that the patient is incapable of making an informed decision," unless the document provides otherwise.<sup>373</sup> The living will applies if "death from a terminal condition is imminent, despite the application of life-sustaining procedures, or if the declarant is in a 'persistent vegetative state.'"<sup>374</sup> These forms may be signed only by an individual who is at least eighteen, or a person who has the same capacity as an adult and has not been determined to be incapable of making an informed decision.<sup>375</sup> Optional forms are included in the statute. Form I is a for living will.<sup>376</sup> Form II allows for the selection of a health care agent and includes instructions for health care.<sup>377</sup> The declarant's signature must have two witnesses described as any individual acting in "good faith," except the person named as a health care agent.<sup>378</sup> At least one witness cannot knowingly be entitled to a portion of the declarant's estate or receive a financial benefit "by reason of the death of the declarant."<sup>379</sup> Revocation can be "by a signed and dated writing, by physical destruction, by an oral statement to a health care practitioner, or by the execution of a subsequent directive."<sup>380</sup> The living will form has a blank dealing with a declarant's pregnancy.<sup>381</sup> The treating physician is not required to give "medically ineffective treatment" in an effort to comply with a directive.<sup>382</sup>

A physician who refuses to comply with a directive must make a "reasonable effort" to transfer the patient to another health care provider.<sup>383</sup> A health care provider is not subject to criminal or civil liability or charges of unprofessional conduct if the provider withheld or withdrew health care in accordance with the Act.<sup>384</sup> An out-of-state directive is valid if it complies with the laws of Maryland, or the state where it were executed.<sup>385</sup> If no agent is named, a surrogate decision maker may act.<sup>386</sup> A physician can petition the appropriate court if the instructions contained in the directive are inconsistent with the "generally accepted

---

373. *Id.* § 5-602(e)(1).

374. *Id.* § 5-603.

375. *Id.* §§ 5-601(f), -602(a).

376. *Id.* § 5-603.

377. *Id.*

378. *Id.* § 5-602(c)(2)(i), (ii).

379. *Id.* § 5-602(c)(2)(iii).

380. *Id.* § 5-604.

381. *Id.* § 5-603.

382. *Id.* § 5-611.

383. *Id.* § 5-613(a)(1)(iii).

384. *Id.* § 5-609(a).

385. *Id.* § 5-617.

386. *Id.* § 5-605, -605(2).

standards" of medical care, and interested parties can ask the court to enjoin actions not "lawfully authorized."<sup>387</sup>

#### MASSACHUSETTS

Massachusetts does not have a statutory living will act. However, it does have the "Health Care Proxies Act."<sup>388</sup> This Act allows for the naming of a health care agent in a health care proxy.<sup>389</sup> The health care agent can be authorized to make "any and all" health care decisions for the declarant including decisions about life-sustaining treatment.<sup>390</sup> The required elements in a health care proxy are listed in the statute, but no suggested form is printed in the Act.<sup>391</sup> The proxy must identify "the principal and health care agent," indicate that the agent has the authority to make decisions for the declarant, list any limitations on that authority, and indicate that the agent has the authority if the declarant lacks capacity.<sup>392</sup>

The proxy can be revoked "orally or in writing," or "by any other act evidencing specific intent to revoke."<sup>393</sup> No health care provider is subject to civil or criminal liability or charges of unprofessional conduct for carrying out "in good faith" a decision of an agent appointed by a health care proxy.<sup>394</sup> Out-of-state directives are valid in Massachusetts as long as they do not violate provisions of the Act.<sup>395</sup> The physician can refuse to follow the instructions of the proxy if those instructions violate the "moral or religious views" of the physician, but he or she must transfer the declarant to another health care provider or facility.<sup>396</sup> Interested parties may petition the court regarding disputes involving the proxy.<sup>397</sup> If there is no proxy, the physician can rely on the responsible parties as listed in the statute.<sup>398</sup>

#### MICHIGAN

Michigan does not have a statutory act dealing with living wills. However, it does authorize health care powers of attorney.<sup>399</sup> A person

---

387. *Id.* § 5-612(a)(b).

388. MASS. GEN. LAWS ANN. ch. 201D, §§ 1-17 (West Supp. 1997).

389. *Id.* § 2.

390. *Id.* § 5.

391. *Id.* § 4.

392. *Id.*

393. *Id.* § 8.

394. *Id.* § 7.

395. *Id.* § 11.

396. *Id.* § 14.

397. *Id.* § 17.

398. *Id.* § 16.

399. MICH. COMP. LAWS § 700.496 (West 1995).



named in the health care power of attorney, if expressly given the authorization to do so, may make a decision to withhold or withdraw treatment which would allow a declarant to die.<sup>400</sup> Only a person eighteen or older who "is of sound mind" may designate a person to make medical decisions.<sup>401</sup> Two people, neither of whom can be the declarant's "spouse, parent, child, grandchild, sibling, presumptive heir, known devisee at the time of witnessing, physician, patient advocate, an employee of a life or health insurance provider for the patient, or an employee of a health facility that is treating the patient, or an employee of a home for the aged," must witness the declarant's signature.<sup>402</sup>

The directive can contain health care instructions and the required language is contained in the statute.<sup>403</sup> The directive becomes effective when ". . . the patient is unable to participate in medical treatment decisions."<sup>404</sup> Medical treatment cannot be withdrawn if the declarant is pregnant and that withdrawal would result in the pregnant declarant's death.<sup>405</sup> The health care power of attorney may be revoked at any time and in any manner by the declarant, by the death of the declarant, by order of the probate court, or by the resignation of the agent named in the directive.<sup>406</sup>

#### MINNESOTA

Minnesota has not substantially adopted any of the Uniform Acts. Its act is the "Minnesota Living Will Act."<sup>407</sup> The living will applies when the declarant is in a "terminal condition" and is unable to make his or her own health care decisions, and the living will has been delivered to the declarant's "physician or other health care provider."<sup>408</sup> Only a competent adult may make a living will.<sup>409</sup> A living will directive must be substantially in the form provided.<sup>410</sup> The signature of the declarant must be witnessed by two adults or must be acknowledged by a notary public.<sup>411</sup> If it is witnessed, the witnesses cannot be entitled to any portion of the declarant's estate or be named as a health care proxy.<sup>412</sup>

---

400. *Id.* § 700.496(7)(d).

401. *Id.* § 700.496(1).

402. *Id.* § 700.496(3).

403. *Id.* § 700.496(7).

404. *Id.* § 700.496(7)(a).

405. *Id.* § 700.496(7)(c), (9)(d), (17).

406. *Id.* § 700.496(7)(g), (11).

407. MINN. STAT. §§ 145B.01-.17 (West Supp. 1998).

408. *Id.* § 145B.04(a).

409. *Id.* § 145B.03 subd 1.

410. *Id.* § 145B.04.

411. *Id.* § 145B.03 subd. 2.

412. *Id.* § 145B.03(d).

The directive may be revoked "in whole or in part," and "at any time and in any manner by the declarant without regard to declarant's physical or mental condition."<sup>413</sup> The revocation is effective when the declarant's health care provider has been notified of the revocation.<sup>414</sup>

The living will has no effect during the time the declarant is pregnant "as long as it is possible that the fetus could develop to the point of live birth with continued application of life-sustaining treatment."<sup>415</sup> If the treating physician or health care provider is unwilling to comply with the living will, the physician must promptly notify the declarant of that unwillingness and if a competent declarant fails to transfer to another physician or health care provider the physician or health care provider does not have a duty to transfer the declarant.<sup>416</sup> However, if the physician or health care provider fails to notify a competent declarant of his or her unwillingness to comply with a directive, and the declarant becomes incompetent, then the physician or health care provider must make "reasonable efforts" to transfer the declarant to another health care provider.<sup>417</sup> The provider's care must be based on "reasonable medical practice."<sup>418</sup> Out-of-state directives are effective in Minnesota if they are in substantial compliance with Minnesota law.<sup>419</sup> A health care proxy can be appointed to make health care decisions for the declarant consistent with the instructions contained in the living will.<sup>420</sup> Minnesota authorizes an attorney-in-fact for health care in a health care power of attorney.<sup>421</sup>

#### MISSISSIPPI

Mississippi has not substantially adopted any of the Uniform Acts. Its act is the "Withdrawal of Life-Saving Mechanisms Act."<sup>422</sup> It applies when the declarant has a "... terminal physical condition causing severe distress or unconsciousness," and the declarant's "physician and two (2) other physicians" agree that there is no expectation for the declarant to regain consciousness or a meaningful state of health and that "but for the use of life-sustaining mechanisms the declarant would immediately die."<sup>423</sup> Only a mentally competent person eighteen or older may sign

---

413. *Id.* § 145B.09 subd. 1.

414. *Id.* §§ 145B.04(c), -145B.09 subd. 1.

415. *Id.* § 145B.13.

416. *Id.* § 145B.06 subd.1(a).

417. *Id.* § 145B.06 subd. 1(b).

418. *Id.* § 145B.13

419. *Id.* § 145B.16

420. *Id.* § 145B.03 subd. 1.

421. *Id.* §§ 145C.01-.15 (West 1998).

422. MISS. CODE ANN. §§ 41-41-101 to -121 (1993).

423. *Id.* § 41-41-113.

a living will.<sup>424</sup> A directive must substantially comply with the form contained in the statute.<sup>425</sup> The directive contains instructions regarding the removal of life-sustaining equipment.<sup>426</sup> The declarant's signature on the directive must be witnessed by two individuals neither of whom is related to declarant, has a claim in or is entitled to a portion of the declarant's estate, or is the attending physician or an employee of the attending physician.<sup>427</sup> The directive may be revoked in writing if the revocation follows the statutory form, or orally if the declarant is unable to sign the form.<sup>428</sup> The directive has no effect during the time the declarant is pregnant and the attending physician knows that she is pregnant.<sup>429</sup> If the physician or health care facility does not follow the directive, he or she must cooperate in the transfer of the declarant to another physician or health care facility.<sup>430</sup> A physician who follows the instructions of the directive in "good faith" and in compliance with this Act is not guilty of a criminal offense, or subject to civil liability, and is not in breach of his or her professional obligations.<sup>431</sup> The durable power of attorney for health care decisions must be in substantially the same form as the one contained in the statute.<sup>432</sup>

#### MISSOURI

Missouri has substantially adopted the Uniform Rights of the Terminally Ill Act, promulgated in 1985, naming its version the "Directives, Life Support" Act.<sup>433</sup> The directive is given operative effect when the declarant's condition is determined to be "terminal" and the declarant is unable to make his or her own treatment decisions.<sup>434</sup> The attending physician determines terminal condition.<sup>435</sup> Only a competent person eighteen or older may sign a directive.<sup>436</sup> The form contained in the statute is optional and consists of instructions regarding the withholding or withdrawal of life-sustaining equipment.<sup>437</sup> If the directive is not

---

424. *Id.* § 41-41-105.

425. *Id.* § 41-41-107.

426. *Id.*

427. *Id.* §§ 41-41-107(1), -111.

428. *Id.* § 41-41-109(1), (3).

429. *Id.* § 41-41-107(1).

430. *Id.* § 41-41-115(2).

431. *Id.* § 41-41-117(1).

432. *Id.* § 41-41-163 (1993).

433. MO. ANN. STAT. §§ 459.010-.055 (West 1992).

434. *Id.* § 459.025.

435. *Id.* § 459.010(6).

436. *Id.* §§ 459.010(2), -.015(1).

437. *Id.* § 459.015(3).

wholly in the handwriting of the declarant, two adults, neither of whom signed the directive on behalf of the declarant must witness it.<sup>438</sup>

The directive can be revoked "at any time and in any manner" by the declarant without regard to mental or physical condition.<sup>439</sup> The directive has no effect during pregnancy as diagnosed by the attending physician.<sup>440</sup> If the attending physician is unable to comply with the directive, that physician should take all "reasonable steps" to transfer the patient to another physician.<sup>441</sup> The treating physician is not criminally or civilly liable or subject to claims of unprofessional conduct for following the directive in "good faith" and pursuant to usual and customary medical standards.<sup>442</sup> Agents with the authority to make health care decisions are governed by the Durable Power of Attorney for Health Care Act.<sup>443</sup>

#### MONTANA

Montana has substantially adopted the Uniform Rights of the Terminally Ill Act, set forth in 1989, naming it the "Montana Rights of the Terminally Ill Act."<sup>444</sup> The directive becomes operative when its existence "is communicated to the attending physician" and the attending physician determines that the declarant is in a "terminal condition" and no longer able to make decisions regarding the administration of life-sustaining treatment.<sup>445</sup> Only a person of sound mind eighteen years or older may sign a directive.<sup>446</sup> An optional form is provided in the statute.<sup>447</sup> The statutory directive contains instructions regarding life-sustaining treatment and the appointment of an agent to make health care decisions.<sup>448</sup> Two individuals must witness the declarant's signature.<sup>449</sup> The directive may be revoked at any time and in any manner without regard to declarant's "mental or physical condition."<sup>450</sup> Life-sustaining treatment cannot be withheld or withdrawn if the declarant is known by the attending physician to be pregnant with a viable fetus and it is probable that the fetus will develop to the point of a live birth.<sup>451</sup> If

---

438. *Id.* § 459.015(4).

439. *Id.* § 459.025.

440. *Id.* § 459.020(1).

441. *Id.* § 459.030(1).

442. *Id.* § 459.040.

443. *Id.* §§ 404.800, -.865 (West Supp. 1998).

444. MONT. CODE ANN. §§ 50-9-101 to -206 (1998).

445. *Id.* § 50-9-105(1).

446. *Id.* § 50-9-103(1).

447. *Id.* § 50-9-103(2).

448. *Id.*

449. *Id.* § 50-9-103(1).

450. *Id.* § 50-9-104(1).

451. *Id.* §§ 50-9-106(6), -202(3).

the treating physician or other health care provider of the declarant is unwilling to comply with the living will, the physician or health care provider must take all "reasonable steps" to transfer the declarant.<sup>452</sup>

A physician who withholds or withdraws life-sustaining treatment in accordance with the requirements of the Act is not subject to civil or criminal liability or deemed guilty of unprofessional conduct.<sup>453</sup> A directive executed in another state and similar to Montana's is recognized if it complies with the laws of the state where it is executed.<sup>454</sup> A health care proxy can be named so that decisions are limited to the withholding or withdrawal of life-sustaining treatment.<sup>455</sup> If there is no effective directive, family members listed in the statute may give written instructions regarding the withholding or withdrawal of life-sustaining treatment.<sup>456</sup> An attorney-in-fact to make health care decisions regarding the withholding or withdrawal of life-sustaining treatment may be named.<sup>457</sup> The attorney-in-fact would then have the authorization to make decisions regarding life-sustaining equipment similar to the health care proxy named in the living will directive.<sup>458</sup>

#### NEBRASKA

Nebraska has substantially adopted the Uniform Rights of the Terminally Ill Act, set forth in 1985, under the name of the "Rights of the Terminally Ill Act."<sup>459</sup> The living will becomes operative when its existence is "communicated to the attending physician," the attending physician diagnoses the declarant to be in a "terminal condition" or "persistent vegetative state," and the declarant is "unable to make decisions regarding administration of life-sustaining treatment," and the attending physician has notified "a reasonably available member of the declarant's immediate family."<sup>460</sup> Only an adult nineteen or older of sound mind may execute a living will.<sup>461</sup> An optional form is printed in the Act but the directive can be in another form.<sup>462</sup> The directive contains instructions regarding the withholding or withdrawal of life-sustaining treatment.<sup>463</sup> The declarant's signature must be notarized or

---

452. *Id.* § 50-9-203.

453. *Id.* § 50-9-204(3).

454. *Id.* § 50-9-111.

455. *Id.* § 50-9-103(1).

456. *Id.* § 50-9-106(1), (2).

457. *See* §§ 50-9-103 (1998); 72-5-501, -502 (1996).

458. *Id.*

459. NEB. REV. STAT. §§ 20-401 to -416 (1997).

460. *Id.* § 20-405.

461. *Id.* §§ 20-403(1), -404(1).

462. *Id.* § 20-404(2).

463. *Id.*

witnessed by two individuals.<sup>464</sup> No witness can be an employee of a life or health insurance provider, and only one witness can be an administrator or employee of a health care provider.<sup>465</sup> The directive can be revoked "at any time and in any manner without regard to the declarant's mental or physical condition."<sup>466</sup>

The directive has no effect during the time the declarant is pregnant with a viable fetus "so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment."<sup>467</sup> An attending physician who is "unwilling to comply" with the living will must take all "reasonable steps" to transfer the declarant to another physician or health care provider who is willing to comply with the living will.<sup>468</sup> A physician is immune from civil or criminal liability, or charges of unprofessional conduct for following an unrevoked living will directive.<sup>469</sup> A directive executed outside of Nebraska is valid if executed in compliance with the laws of Nebraska.<sup>470</sup> The declarant may name an attorney-in-fact who is authorized to make health care decisions including decisions regarding life-sustaining treatment.<sup>471</sup>

#### NEVADA

In 1989, Nevada adopted the "Uniform Act on Rights of the Terminally Ill Act," which is modeled after the Uniform Rights of the Terminally Ill Act, promulgated in 1989.<sup>472</sup> The directive becomes effective when its existence is "communicated to the attending physician" and the attending physician has determined the declarant "to be in a terminal condition and unable to make decisions regarding administration of life-sustaining treatment."<sup>473</sup> Only a person of sound mind who is eighteen or older may execute a living will.<sup>474</sup> Two optional forms are listed in the statute, but they need not be followed.<sup>475</sup> The first form directs the physician when to withhold or withdraw life-sustaining treatment.<sup>476</sup> The second form appoints an agent to make decisions regarding life-sustaining treatment.<sup>477</sup> Two witnesses must sign the de-

---

464. *Id.* § 20-404(1).

465. *Id.* § 20-404(1).

466. *Id.* § 20-406(1).

467. *Id.* § 20-408(3).

468. *Id.* § 20-409.

469. *Id.* § 20-410(1).

470. *Id.* § 20-414.

471. *Id.* § 30-3401 to -3432 (1995).

472. NEV. REV. STAT. §§ 449.535-.690 (1996).

473. *Id.* § 449.617.

474. *Id.* § 449.600.

475. *Id.* §§ 449.610, -.613.

476. *Id.* § 449.610.

477. *Id.* § 449.613.

claration.<sup>478</sup> The declaration may be revoked at any time and in any manner by the declarant regardless of "his [or her] mental or physical condition."<sup>479</sup> The directive has no effect while the attending physician is aware that the declarant is pregnant, and "it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment."<sup>480</sup> A physician or provider of health care who is unwilling to comply with the directive must take all "reasonable steps" to transfer the declarant to another physician or provider of health care.<sup>481</sup>

A physician is immune from criminal or civil liability or claims of unprofessional conduct for following the directive.<sup>482</sup> An out-of-state directive is valid in Nevada if it complies with the other state's law or the laws of Nevada.<sup>483</sup> The declarant can appoint another person to make decisions regarding life-sustaining care in a living will context.<sup>484</sup> If there is no effective directive, family members in the priority listed in the statute can sign a written consent form for the withholding or withdrawal of life-sustaining treatment.<sup>485</sup> A declarant can name an attorney-in-fact to make medical decisions, including those to withhold or withdraw life support.<sup>486</sup> The durable power of attorney form includes living will type instructions for the attorney-in-fact if the declarant is in a terminal condition or coma.<sup>487</sup>

#### NEW HAMPSHIRE

New Hampshire has not substantially adopted any of the Uniform Acts. Its act is the "Living Wills Act."<sup>488</sup> The living will applies when the declarant has a "terminal condition," or is "permanently unconscious," and is "permanently incapable of participating in decisions" about the declarant's care.<sup>489</sup> Only a person of sound mind eighteen or older may sign a living will directive.<sup>490</sup> An optional form is listed in the statute.<sup>491</sup> The form must be signed by two witnesses and acknowledged

---

478. *Id.* §§ 449.610, -.613.

479. *Id.* § 449.620.

480. *Id.* § 449.624(4).

481. *Id.* § 449.628.

482. *Id.* § 449.640(2).

483. *Id.* § 449.690.

484. *Id.* § 449.613.

485. *Id.* § 449.626.

486. *Id.* § 449.830.

487. *Id.* § 449.830 (referring to § 6 of form).

488. N.H. REV. STAT. ANN. §§ 137-H:1 to H:16 (1996).

489. *Id.* § 137-H:3.

490. *Id.*

491. *Id.*

by a notary.<sup>492</sup> The witnesses cannot be the declarant's "spouse, heir at law, attending physician" or agent of attending physician, or a person with a claim against the declarant's estate.<sup>493</sup> If the declarant is "a resident of a health care facility or patient in a hospital, no more than one witness may be the health care provider or such provider's employee."<sup>494</sup>

The directive may be revoked by "burning, tearing, or obliterating" the directive, or by oral or written revocation.<sup>495</sup> If the attending physician knows that the declarant is pregnant, the Act does not authorize the withholding of life-sustaining procedures.<sup>496</sup> If the attending physician will not honor the directive "because of personal beliefs or conscience," the attending physician must make the necessary arrangements to transfer the declarant to another physician who will honor the directive.<sup>497</sup> The attending physician is immune from civil or criminal liability if his or her actions are in "good faith," and "in keeping with reasonable medical standards," and in compliance with the living will and the statutory act.<sup>498</sup> In order for an out-of-state directive to be considered valid under New Hampshire law, it must be in compliance with New Hampshire law.<sup>499</sup> An attorney-in-fact for health care may be named to make health care decisions including decisions about life-sustaining treatment.<sup>500</sup>

#### NEW JERSEY

New Jersey has not substantially adopted any of the Uniform Acts. Its act is named the "New Jersey Advance Directives for Health Care Act."<sup>501</sup> The advanced directive becomes operative when it is transmitted to the attending physician or health care institution, and it is determined that the declarant lacks the capacity to make health care decisions.<sup>502</sup> Treatment decisions pursuant to the directive cannot be made until a "reliable diagnosis and prognosis" for the declarant has been made.<sup>503</sup> Only a competent adult eighteen or older may execute a living

---

492. *Id.* § 137-H:4.

493. *Id.*

494. *Id.*

495. *Id.* § 137-H:7.

496. *Id.* § 137-H:14(I).

497. *Id.* § 137-H:6(II).

498. *Id.* § 137-H:9.

499. *Id.* § 137-H:14-a.

500. *Id.* § 137-J:15 (1996).

501. N.J. STAT. ANN. §§ 26:2H-53 to -78 (West 1996).

502. *Id.* § 26:2H-59(a).

503. *Id.* § 26:2H-59(b).



will.<sup>504</sup> A form is not provided in the statute. The advanced directive may designate a proxy for health care decisions and a statement of wishes regarding health care decisions.<sup>505</sup> Two adults must witness the directive or be acknowledged by the declarant before a notary public, attorney at law, or other person authorized to administer oaths.<sup>506</sup> A witness cannot be the person named as a health care representative.<sup>507</sup> The advanced directive may be revoked orally or in writing, or by any other act evidencing the intent to revoke, or by the execution of a subsequent directive.<sup>508</sup>

An "incompetent patient" may "suspend an advance directive."<sup>509</sup> A female declarant can include instructions as to whether or not the directive is to be effective during a pregnancy.<sup>510</sup> A health care institution that cannot comply with a directive must take "all reasonable steps" to effect the transfer of a patient to another health care professional or institution that will comply with the directive.<sup>511</sup> A health care representative is immune from civil or criminal liability or discipline for "professional misconduct" for acts performed pursuant to a directive that are in "good faith," in compliance with this Act, "appropriate rules and regulations," and in compliance with "accepted professional standards."<sup>512</sup> Advanced directives executed out-of-state are considered valid if they are in compliance with the laws of that state or the laws of New Jersey.<sup>513</sup> If there is no appointed health care representative, the physician is to consult with the legal guardian, family or others acting on behalf of the declarant.<sup>514</sup> If there is a dispute regarding the care of the declarant, the parties may use the dispute resolution procedures of the health care facility or go to the appropriate court.<sup>515</sup>

#### NEW MEXICO

New Mexico has substantially adopted the Uniform Health Care Decisions Act.<sup>516</sup> The authority of a health care agent becomes effective when the declarant is determined to lack capacity, unless a power of

---

504. *Id.* §§ 26:2H-55, -56.

505. *Id.* § 26:2H-56.

506. *Id.*

507. *Id.*

508. *Id.* § 26:2H-57(b).

509. *Id.* § 26:2H-57(d).

510. *Id.* § 26:2H-56.

511. *Id.* § 26:2H-65(a)(4).

512. *Id.* § 26:2H-73(b).

513. *Id.* § 26:2H-76.

514. *Id.* § 26:2H-64.

515. *Id.* § 26:2H-66.

516. N.M. STAT. ANN. §§ 24-7A-1 to -18 (Michie 1997).

attorney for health care states otherwise.<sup>517</sup> The statute provides an optional form that allows for the withdrawal of treatment if the declarant is unable to make or communicate decisions regarding health care, and has an incurable or irreversible condition, or is permanently unconscious, or the benefits of treatment are outweighed by the burdens.<sup>518</sup> Only an adult or emancipated minor who has the capacity to make his or her own health care decisions may make an advanced health care directive either in writing or orally.<sup>519</sup> The optional form allows for the naming of an agent to make all health care decisions for the declarant, the listing of living will instructions, and the naming of a primary physician.<sup>520</sup> If the directive is oral, "it must be made by personally informing a health-care provider."<sup>521</sup> The suggested form contains a space labeled "optional" for two witness signatures.<sup>522</sup>

The designation of an agent can only be revoked by a signed writing or by informing the supervising health care provider while the declarant has capacity.<sup>523</sup> All other parts of a directive can be revoked while the declarant has capacity at any time and in any manner that communicates the declarant's intent to revoke.<sup>524</sup> If the health care provider cannot comply with the directive, the provider must continue caring for the declarant and make "all reasonable efforts" to assist in the transfer of the declarant to another health care provider or health care institution.<sup>525</sup> A health care provider that acts in "good faith and in accordance with the generally accepted health care standards" is immune from civil or criminal liability or discipline for unprofessional conduct for following a directive.<sup>526</sup> A directive is valid if it complies with the Act, regardless of when or where it was executed.<sup>527</sup> An agent named as the attorney-in-fact has the authority to make all health care decisions for the declarant, and the power of attorney must be in writing.<sup>528</sup> If the directive does not name a health care agent, the individuals listed in the statute may make decisions for the person

---

517. *Id.* § 24-7A-2C.

518. *Id.* § 24-7A-4.

519. *Id.* § 24-7A-2A.

520. *Id.* § 24-7A-4.

521. *Id.* § 24-7A-2A.

522. *Id.* § 24-7A-4.

523. *Id.* § 24-7A-3A.

524. *Id.* § 24-7A-3B.

525. *Id.* § 24-7A-7G.

526. *Id.* § 24-7A-9.

527. *Id.* § 24-7A-16A.

528. *Id.* § 24-7A-2B.

lacking capacity.<sup>529</sup> An interested person may petition the appropriate district court to enjoin or direct a health care decision.<sup>530</sup>

#### NEW YORK

New York has not substantially adopted any of the Uniform Acts. Its act is the "Health Care Agents and Proxies Act."<sup>531</sup> New York does not have a statutory act regulating living wills. However, the named agent has the authority to make any and all health care decisions for the principal, including decisions about artificial nutrition and hydration if the proxy so states.<sup>532</sup> The health care agent's authority starts when the declarant has been determined to lack the "capacity to make health care decisions."<sup>533</sup> The attending physician must make a determination that the declarant lacks mental capacity.<sup>534</sup> Only a competent adult may appoint an agent to make health care decisions.<sup>535</sup> The optional proxy form contains space to allow for instructions to the agent, including instructions regarding artificial nutrition and hydration that must be included if the agent is to have authority over those types of decisions.<sup>536</sup> Two adult witnesses must sign the proxy, neither of whom can be the named agent or the person who signed on behalf of the declarant.<sup>537</sup> If the declarant is in a "mental hygiene" facility, at least one witness shall not be affiliated with the facility.<sup>538</sup> If it is a hospital, or operated by the Office of Mental Retardation and Developmental Disabilities, one witness must be a psychiatrist.<sup>539</sup>

The proxy can be revoked orally or in writing, or by any other act which evidences a "specific intent to revoke."<sup>540</sup> If the health care provider cannot honor the proxy, the provider must inform the agent of the refusal and assist in the prompt transfer of the declarant to another hospital.<sup>541</sup> A health care provider is immune from civil or criminal liability and charges of unprofessional conduct for following a health care agent's instructions in good faith.<sup>542</sup> An out-of-state health care proxy executed in compliance with the laws of that state will be con-

---

529. *Id.* § 24-7A-5B.

530. *Id.* § 24-7A-14.

531. N.Y. PUB. HEALTH LAW §§ 2980-2994 (McKinney 1993 & Supp. 1998).

532. *Id.* §§ 2981(5)(d), -2982(1).

533. *Id.* § 2981(4).

534. *Id.* § 2983(1)(a).

535. *Id.* § 2981(1)(a).

536. *Id.* § 2981(5)(d).

537. *Id.* § 2981(2)(a).

538. *Id.* § 2981(2)(b), (c).

539. *Id.* § 2981(2)(b), (c).

540. *Id.* § 2985(1)(a).

541. *Id.* § 2984(3)(a), (b).

542. *Id.* § 2986(1).

sidered valid in New York.<sup>543</sup> The agent has the authority to make "any and all" health care decisions for declarant, but is not authorized to make decisions regarding artificial nutrition and hydration unless the proxy so states.<sup>544</sup> Interested parties may petition the appropriate court to resolve disputes regarding the health care proxy or the health care agent.<sup>545</sup>

#### NORTH CAROLINA

North Carolina has not substantially adopted any of the Uniform Acts. Its act dealing with living wills is the "Right to Natural Death Act."<sup>546</sup> The directive applies if the declarant is diagnosed by the attending physician to be "terminal and incurable" or in a "persistent vegetative state," which has been confirmed by a second physician.<sup>547</sup> Only a person of sound mind may sign a directive.<sup>548</sup> A suggested form that meets the statutory requirements is provided in the Act.<sup>549</sup> This form authorizes the withholding or discontinuance of life-sustaining treatment.<sup>550</sup>

The declarant's signature must be witnessed by two people who are not related to the declarant or the declarant's spouse, entitled to any portion of and have no claim to the declarant's estate, or are not the attending physicians or health care providers, or an employee of the health care provider or attending physician of the declarant.<sup>551</sup> If the declarant is in a nursing or group care home, an employee of the home cannot be a witness.<sup>552</sup> A court clerk or a notary public must also certify the declarant's signature as well as the signatures of the witnesses.<sup>553</sup> The declarant may revoke the directive in any manner communicating an intent to revoke without regard to "mental or physical condition."<sup>554</sup> A health care provider is immune from civil or criminal liability, or discipline for unprofessional conduct for following the directive.<sup>555</sup> A health care power of attorney can be combined with this form, or created

---

543. *Id.* § 2990.

544. *Id.* §§ 2981(5)(d), -2982(1).

545. *Id.* § 2992(1), (3).

546. N.C. GEN. STAT. §§ 90-320 to -323 (1997).

547. *Id.* § 90-321(b)(1), (2).

548. *Id.* § 90-321(d).

549. *Id.*

550. *Id.*

551. *Id.* § 90-321(c)(3).

552. *Id.*

553. *Id.*

554. *Id.* § 90-321(e).

555. *Id.* § 90-322(d).

separately.<sup>556</sup> If there is no valid directive, the attending physician must consult with the people listed in the statute in assessing the decision to follow the directive.<sup>557</sup> A health care agent can be named pursuant to the Health Care Powers of Attorney Act.<sup>558</sup>

#### NORTH DAKOTA

North Dakota has substantially adopted the Uniform Rights of the Terminally Ill Act, promulgated in 1985, which it refers to as the "Uniform Rights of the Terminally Ill Act."<sup>559</sup> The living will directive becomes operative when its existence is "communicated to the attending physician," and the attending physician, along with another physician, determines that the declarant is in a "terminal condition" and "no longer able to make decisions regarding the administration of life prolonging treatment."<sup>560</sup> Only a person eighteen or older of sound mind may sign a living will directive.<sup>561</sup> The directive must be substantially in the form provided, but additional specific instructions may be added to it.<sup>562</sup> The declarant's signature must be witnessed by two individuals neither of whom is related to the declarant, entitled to a portion of the declarant's estate, has a claim against the declarant's estate, is directly financially responsible for the declarant's medical care, or is the declarant's attending physician.<sup>563</sup> If the declarant is in a long-term care facility, one of the witnesses must be a recognized member of the clergy, a licensed attorney, or a person designated for that purpose by the Department of Human Services or the county court.<sup>564</sup>

The directive may be revoked "at any time and in any manner" by a writing, physical cancellation, or destruction of the directive, or "oral expression of the intent to revoke."<sup>565</sup> If the declarant is pregnant with a viable fetus, life-sustaining care must be given despite instructions to the contrary in the directive unless "to a reasonable degree of medical certainty . . . such medical treatment will not maintain the patient in such a way as to permit the continued development and live birth of the unborn child," or the administration of life-sustaining procedures will be physically harmful or unreasonably painful to the patient.<sup>566</sup> A

---

556. *Id.* § 90-321(j).

557. *Id.* § 90-322(b).

558. *Id.* §§ 32A-15 to -26 (1996).

559. N.D. CENT. CODE §§ 23-06.4-01 to -14 (1991 & Supp. 1997).

560. *Id.* § 23-06.4-04.

561. *Id.* § 23-06.4-03.

562. *Id.* § 23-06.4-03(3).

563. *Id.* § 23-06.4-03(1).

564. *Id.* § 23-06.4-03(2).

565. *Id.* § 23-06.4-05.

566. *Id.* § 23-06.4-07(3).

health care provider who is unwilling to comply with the directive must take "all reasonable steps to transfer care of the declarant to another physician or health care provider."<sup>567</sup> A physician who follows a directive is immune from criminal or civil liability, or discipline for unprofessional conduct, if the provider's actions were not done in a "grossly negligent manner."<sup>568</sup> An out-of-state directive is valid if it complies with the laws of the state where executed or the laws of North Dakota.<sup>569</sup> A health care attorney-in-fact may be authorized to make any and all health care decisions for the declarant.<sup>570</sup>

## OHIO

Ohio has adopted a version of the Uniform Rights of the Terminally Ill Act, set forth in 1989, called the "Modified Uniform Rights of the Terminally Ill Act."<sup>571</sup> The directive applies when its existence is communicated to the attending physician, and the attending physician and one other physician determine the declarant to be in a "terminal condition" or in a "permanently unconscious state" and the proper specialists are consulted, and "the attending physician determines that the declarant is no longer able to make informed decisions regarding the administration of life-sustaining treatment."<sup>572</sup> The directive may address either the declarants' "terminal condition," or "permanent vegetative state," or both.<sup>573</sup> Only an adult, eighteen years of age or older, who is of sound mind may sign a directive.<sup>574</sup> No suggested form is provided although a printed directive form may be sold or distributed to individuals not advised by an attorney.<sup>575</sup> Two adult people must witness the declarant's signature.<sup>576</sup> Neither of the adults can be related to declarant, be the attending physician, or be the administrator of a nursing home where the declarant resides.<sup>577</sup> The declarant's signature may be acknowledged before a notary public instead.<sup>578</sup>

The directive may be revoked "at any time and in any manner."<sup>579</sup> Life-sustaining treatment cannot be withdrawn or withheld if the declar-

---

567. *Id.* § 23-06.4-08.

568. *Id.* § 23-06.4-09(2).

569. *Id.* § 23-06.4-13.

570. *Id.* §§ 23-06.5-01 to -18 (1991 & Supp. 1998).

571. OHIO REV. CODE ANN. §§ 2133.01-.15 (Anderson 1994 & Supp. 1997).

572. *Id.* § 2133.03(A)(1).

573. *Id.*

574. *Id.*

575. *Id.* § 2133.07.

576. *Id.* § 2133.02(B)(1).

577. *Id.*

578. *Id.* § 2133.02(B)(2).

579. *Id.* § 2133.04.

ant is pregnant and if the withholding or withdrawal of life-sustaining treatment would terminate the pregnancy, unless it can be determined that the fetus would be born alive.<sup>580</sup> A health care provider who refuses to consent to a directive cannot prevent or unreasonably delay the transfer of the patient to another physician or health care facility.<sup>581</sup> A health care provider is immune from criminal or civil liability, or discipline for unprofessional conduct for giving effect to the directive in good faith.<sup>582</sup> An out-of-state directive is valid if it complies with the laws of that state or "substantially complies with" the laws of Ohio.<sup>583</sup> The directive may contain names of individuals that the physician is to contact before following the living will directive.<sup>584</sup> If the declarant does not have a valid living will directive or health care power of attorney, the parties listed in the statute may be able to consent to the withholding or withdrawal of life-sustaining procedures.<sup>585</sup> If that person objects after being notified by the attending physician of the plan to withhold or withdraw life-sustaining treatment, the Probate Court may be petitioned to rule on the dispute.<sup>586</sup> An agent may be named as a power of attorney for health care to make health care decisions including the withholding or withdrawal of life-sustaining treatment.<sup>587</sup>

#### OKLAHOMA

Oklahoma has substantially adopted a version of the Uniform Rights of the Terminally Ill Act, set forth in 1989, referred to as the "Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act."<sup>588</sup> The directive applies when its existence is communicated to the attending physician and the declarant can no longer make his or her own decisions regarding the "administration of life-sustaining treatment."<sup>589</sup> Only an adult of sound mind eighteen years or older may execute a directive.<sup>590</sup> The form contained in the statute must be substantially followed.<sup>591</sup> The form contains a living will form, an appointment of health care proxy section, and an anatomical gift section.<sup>592</sup> Two adults

---

580. *Id.* § 2133.06(B).

581. *Id.* § 2133.10(A).

582. *Id.* § 2133.11(A)(1).

583. *Id.* § 2133.14.

584. *Id.* § 2133.05(A)(2)(a)(i).

585. *Id.* § 2133.08(B)(1).

586. *Id.* § 2133.05(B)(1)(a).

587. *Id.* §§ 1337.11-.17 (Anderson 1993 & Supp. 1998).

588. OKLA. STAT. ANN. tit. 63, §§ 3101.1-.16 (West 1997).

589. *Id.* § 3101.5(A).

590. *Id.* § 3101.4(A).

591. *Id.* § 3101.4(B).

592. *Id.*

who are not "legatees, devisees or heirs at law" of the declarant's estate must witness the declarant's signature.<sup>593</sup> The declarant may revoke the directive partially or completely in any manner without regard to mental or physical condition.<sup>594</sup> The directive has no effect during the declarant's pregnancy.<sup>595</sup>

A health care provider that will not comply with a directive must take "all reasonable steps" to transfer the declarant to another physician or health care provider.<sup>596</sup> A health care provider is immune from civil or criminal liability, or claims of unprofessional conduct for actions taken pursuant to a directive that are in accord with "reasonable medical standards."<sup>597</sup> An out-of-state directive is considered valid in Oklahoma to the extent its authorizations do not exceed those in the Oklahoma directive, and assuming the directive complies with the laws of Oklahoma.<sup>598</sup> A health care proxy that is authorized to make all health care decisions for the declarant, including those relating to life-sustaining treatment, can be named in the form

#### OREGON

Oregon has not substantially adopted any of the Uniform Acts. Its act is the "Oregon Health Care Decisions Act."<sup>599</sup> The health care attorney-in-fact has authority when the declarant is incapable of making his or her own health care decisions.<sup>600</sup> Only a capable adult, eighteen or older can sign a directive which may include health care instructions and the appointment of an attorney-in-fact for health care.<sup>601</sup> The directive must be in the form provided in the statute.<sup>602</sup> The directive must be signed by two witnesses who do not own, operate, or work at a health care facility where the declarant is a patient or a resident, and one of whom is not related to declarant, or entitled to a portion of the declarant's estate.<sup>603</sup> The attorney-in-fact for health care cannot be a witness.<sup>604</sup> If the declarant resides in a long-term care facility, then one witness must be qualified by the Department of Human Resources.<sup>605</sup>

---

593. *Id.* § 3101.4(A).

594. *Id.* § 3101.6(A).

595. *Id.* § 3101.8(C).

596. *Id.* § 3101.9.

597. *Id.* § 3101.10(B).

598. *Id.* § 3101.14.

599. OR. REV. STAT. §§ 127.505-.660 (Supp. 1997).

600. *Id.* § 127.535.

601. *Id.* § 127.510(1), (2).

602. *Id.* § 127.515(1)-(3).

603. *Id.* § 127.515(4)(c).

604. *Id.* § 127.515(4)(d).

605. *Id.* § 127.515(4)(e).



The portion of the directive regarding life-sustaining treatment can be revoked at any time and in any manner by the declarant, without regard to his or her mental capacity.<sup>606</sup> Other portions of the directive can be revoked at any time and in any manner by a capable declarant.<sup>607</sup> If the health care provider refuses to follow the directive, the provider must either discharge the patient or make a "reasonable effort" to transfer the patient to another health care provider.<sup>608</sup>

A health care provider that acts pursuant to a declarant's instructions, and who complies with the Act's requirements, is not subject to civil or criminal liability or discipline for unprofessional conduct.<sup>609</sup> An out-of-state advanced directive is valid in Oregon if it complies with the laws of Oregon, the laws of the state where it was executed, or the location of the declarant at the time of execution.<sup>610</sup> The attorney-in-fact for health care does not have the authority to make decisions regarding life-sustaining procedures unless specific authority has been given in the directive or certain medical conditions are met.<sup>611</sup> The attorney-in-fact does not have the authority to consent to commitment to a mental facility, convulsive treatment, psychosurgery, sterilization, or abortion for the declarant.<sup>612</sup> If no one is appointed as the health care agent, the individuals listed in the statute may be authorized to make decisions regarding life-sustaining treatment.<sup>613</sup> An interested person may petition the court regarding disputes involving the directive.<sup>614</sup>

#### PENNSYLVANIA

Pennsylvania has not adopted any of the Uniform Acts. Its act regulating directives is the "Advance Directive for Health Care Act."<sup>615</sup> The directive becomes operative when a copy of it is given to the attending physician and the declarant is determined to be "incompetent" and in a "terminal condition," or in a state of "permanent unconsciousness."<sup>616</sup> Only a person eighteen years or older, who has graduated from high school, or is married, may sign a directive.<sup>617</sup> The form included in the

---

606. *Id.* § 127.545(1)(a).

607. *Id.* § 127.545(1)(b).

608. *Id.* § 127.625(2)(d).

609. *Id.* § 127.555(3).

610. *Id.* § 127.515(5).

611. *Id.* § 127.540(6).

612. *Id.* § 127.540(1)-(5).

613. *Id.* § 127.625(2).

614. *Id.* § 127.550(2).

615. 20 PA. CONS. STAT. ANN. §§ 5401-5416 (West Supp. 1997).

616. *Id.* § 5405

617. *Id.* § 5404(a).

statute is optional and may include additional directions.<sup>618</sup> The directive contains instructions regarding the appointment of a health care surrogate and instructions regarding life-sustaining treatment and anatomical gift provisions.<sup>619</sup> Two witnesses must sign the directive, neither of whom can be the person who signed the directive on behalf of the declarant.<sup>620</sup>

The declarant may revoke the directive "at any time and in any manner" without regard to the declarant's mental or physical condition.<sup>621</sup> Instructions to withdraw or withhold life-sustaining treatment are void as to a pregnant declarant unless the continuation of treatment will not result in a live birth, will be physically harmful to the declarant, or would cause pain to the declarant that could not be alleviated by medication.<sup>622</sup> If the attending physician or other health care provider cannot follow the directive, the provider must inform the appropriate person and make every reasonable effort to transfer the declarant to another physician or health care provider.<sup>623</sup> A health care provider that follows a directive in compliance with the Act is immune from civil or criminal liability, or discipline for unprofessional conduct.<sup>624</sup> The appointment of a health care agent or surrogate is limited to making medical decisions for the declarant when the declarant is in a terminal condition or in a state of permanent unconsciousness.<sup>625</sup>

#### RHODE ISLAND

Rhode Island has substantially adopted the Uniform Rights of the Terminally Ill Act, set forth in 1989, which is called the "Rights of the Terminally Ill Act."<sup>626</sup> It applies when the existence of the directive has been communicated to the attending physician, and the declarant has "been determined by the attending physician to be in a terminal condition" and unable to make his or her own treatment decisions.<sup>627</sup> Only a competent person eighteen or older may sign a directive.<sup>628</sup> The form included in the statute is optional.<sup>629</sup> The directive contains instructions

---

618. *Id.* § 5404(b).

619. *Id.*

620. *Id.* § 5404(a).

621. *Id.* § 5406(a).

622. *Id.* § 5414(a).

623. *Id.* § 5409(a).

624. *Id.* § 5407(a).

625. *Id.* § 5404(b).

626. R.I. GEN. LAWS §§ 23-4.11-1 to -14 (1996).

627. *Id.* § 23-4.11-3(c).

628. *Id.* § 23-4.11-3(a).

629. *Id.* § 23-4.11-3(d).

regarding life-sustaining treatment.<sup>630</sup> Two witnesses who are not related to the declarant must sign the directive.<sup>631</sup> A directive may be revoked at any time and in any manner by the declarant regardless of his or her mental or physical condition.<sup>632</sup> The directive has no effect during the pregnancy of the declarant if the pregnancy is known to the attending physician and the fetus could develop to the point of live birth "with continued application of life-sustaining procedures."<sup>633</sup> A health care provider who refuses to follow a directive must make the arrangements necessary to transfer the declarant to another physician.<sup>634</sup> A physician who follows a valid directive is immune from civil or criminal liability or charges of unprofessional conduct.<sup>635</sup> An out-of-state directive that is valid in that state is valid in Rhode Island.<sup>636</sup> An attorney-in-fact for health care who is authorized to instruct the declarant's physician to withhold or withdraw life-sustaining procedures may be named.<sup>637</sup>

#### SOUTH CAROLINA

South Carolina has not substantially adopted any of the Uniform Acts. Its act regulating directives is the "Death with Dignity Act."<sup>638</sup> The directive applies when two physicians, one of whom is the attending physician, certify the declarant to have a "terminal condition" or be in a state of "permanent unconsciousness."<sup>639</sup> Only a person eighteen or older may sign a directive.<sup>640</sup> A directive that is in substantially the same form as contained in the statute is valid.<sup>641</sup> The directive contains instructions regarding the withholding or withdrawal of life-sustaining treatment and the appointment of an agent to enforce or revoke the directive.<sup>642</sup> The form must be signed before an officer authorized to administer oaths and in front of two witnesses.<sup>643</sup> No witnesses can be related to the declarant, be directly financially responsible for the declarant's medical care, be entitled to a portion of the declarant's estate, have an interest in the estate of the declarant except as a creditor, or be a

---

630. *Id.*

631. *Id.* § 23-4.11-3(a).

632. *Id.* § 23-4.11-4(a)(1).

633. *Id.* § 23-4.11-6(c).

634. *Id.* § 23-4.11-7.

635. *Id.* § 23-4.11-8(a)(1).

636. *Id.* § 23-4.11-12.

637. *Id.* § 23-4.11-12.

638. S.C. CODE ANN. §§ 44-77-10 to -160 (West Supp. 1997).

639. *Id.* § 44-77-30.

640. *Id.*

641. *Id.* §§ 44-77-40(1), -50.

642. *Id.*

643. *Id.* § 44-77-40(2).

named beneficiary in the declarant's life insurance policy.<sup>644</sup> Only one of the witnesses can be any one of the following: An employee of the declarant's health facility, the attending physician or the employee of the attending physician, or a person who has a claim against the declarant's estate.<sup>645</sup> If the declarant is in a hospital or a resident of a nursing home facility at the time of the executing of the directive, then an ombudsman must be one of the witnesses.<sup>646</sup>

The directive may be revoked by being "defaced, torn, obliterated, or otherwise destroyed," by written revocation, or by an oral expression by the declarant of his or her intent to revoke the directive, or by the declarant's designee, or by a subsequent directive.<sup>647</sup> The directive is ineffective while the declarant is pregnant.<sup>648</sup> If a physician or health care facility cannot follow the directive, they must make a "reasonable effort" to locate a physician or health care provider that will follow the directive and transfer the declarant to that physician or health care provider.<sup>649</sup> If a physician acts in accordance with "reasonable medical standards" when following a valid directive, the physician is immune from civil or criminal liability.<sup>650</sup> An out-of-state directive that complies with the laws of the state where it was executed and expresses an intent substantially similar to South Carolina's directive is considered valid.<sup>651</sup> An agent may be named in the directive who has the authority to enforce or revoke the directive.<sup>652</sup> If the agent is not available, an interested person may petition the court for an order enforcing the directive.<sup>653</sup> If a declarant has not signed a directive certain named individuals in the statute have the authority to make health care decisions for the declarant.<sup>654</sup> A health care power of attorney may be executed to authorize an attorney-in-fact to make health care decisions for the declarant including decisions regarding life-sustaining treatment.<sup>655</sup>

---

644. *Id.*

645. *Id.*

646. *Id.* § 44-77-40(3).

647. *Id.* § 44-77-80.

648. *Id.* § 44-77-70.

649. *Id.* § 44-77-100.

650. *Id.* § 44-77-90.

651. *Id.* § 44-77-30.

652. *Id.* § 44-77-85.

653. *Id.*

654. *Id.* §§ 44-66-10 to -80.

655. *Id.* §§ 62-5-501 to -504.

## SOUTH DAKOTA

South Dakota has not substantially adopted any of the Uniform Acts. Its act regulating living will directives is the "Living Will Act."<sup>656</sup> The directive applies when the declarant has been determined by the attending physician and one other physician to be in a "terminal condition" and "no longer able to make health care decisions regarding administration of life-sustaining treatment."<sup>657</sup> Only a competent adult may sign a directive.<sup>658</sup> A sample form is provided but is optional.<sup>659</sup> It contains instructions regarding life-sustaining treatment.<sup>660</sup> The declarant's signature must be witnessed by two adults and may also be notarized.<sup>661</sup>

The directive may be revoked "at any time and in any manner" by the declarant without regard to the "declarant's mental or physical condition."<sup>662</sup> The directive is ineffective during the declarant's pregnancy unless "to a reasonable degree of medical certainty" a live birth will not occur, or if treatment would be physically harmful to the declarant, or cause severe prolonged pain to the declarant that cannot be alleviated by medication.<sup>663</sup> If the physician objects to the instructions contained in the directive, he or she may transfer the declarant to another physician or health care provider.<sup>664</sup> A physician is immune from civil or criminal liability or charges of unprofessional conduct for following the instructions in a directive.<sup>665</sup> An out of state directive is considered valid in South Dakota if it meets the requirements of the state where executed or the requirements of this Act.<sup>666</sup> A power of attorney may name an attorney-in-fact which has the authority to make all health care decisions for the declarant.<sup>667</sup>

## TENNESSEE

Tennessee has not substantially adopted any of the Uniform Acts. Its act regulating directives is the "Tennessee Right to Natural Death Act."<sup>668</sup> The directive applies when the declarant has a "terminal condi-

---

656. S.D. CODIFIED LAWS ANN. § 34-12D-1 to -22 (Michie 1994).

657. *Id.* § 34-12D-5.

658. *Id.* § 34-12D-2.

659. *Id.* § 34-12D-3.

660. *Id.*

661. *Id.* § 34-12D-2.

662. *Id.* § 34-12D-8.

663. *Id.* § 34-12D-10.

664. *Id.* § 34-12D-12.

665. *Id.* § 34-12D-13.

666. *Id.* § 34-12D-22.

667. *Id.* §§ 59-7-2.5, -2.7(4). See generally *id.* §§ 59-7-2.1 to -2.8.

668. TENN. CODE ANN. §§ 32-11-101 to -112 (Supp. 1997).

tion" and the attending physician has determined that there is no "reasonable medical expectation of recovery."<sup>669</sup> Only a competent adult may execute a directive.<sup>670</sup> The directive must be specifically set forth in the form provided, although other clear written expressions of intent are allowed.<sup>671</sup> The directive contains instructions regarding life-sustaining treatment and organ donation.<sup>672</sup> The declarant's signature must be witnessed by two people who are not related to the declarant, are not entitled to a portion of the declarant's estate or have a claim against the estate, not the attending physician or an employee of the attending physician, or an employee of the health care facility where the declarant is a patient.<sup>673</sup> Regardless of mental state or competency, the declarant may revoke the directive by a "written revocation" or "oral statement or revocation."<sup>674</sup> A health care provider who "cannot in good conscience" comply with a directive must inform the proper parties and make every "reasonable effort" to transfer the declarant to another physician.<sup>675</sup> A health care provider that acts in accordance with "reasonable medical standards" and pursuant to a valid directive is immune from civil or criminal liability, or charges of unprofessional conduct.<sup>676</sup> An out-of-state directive is valid if it complies with the laws of the state where it was signed by a nonresident or the laws of Tennessee.<sup>677</sup> A health care attorney-in-fact may be named.<sup>678</sup>

#### TEXAS

Texas has not substantially adopted any of the Uniform Acts. Its act regulating living wills is the "Natural Death Act."<sup>679</sup> The directive applies when the declarant has a terminal condition and is "comatose, incompetent, or otherwise mentally or physically incapable of communication."<sup>680</sup> Only a competent adult may sign a directive.<sup>681</sup> Certain individuals may execute a directive on behalf of a person who is under eighteen in certain circumstances.<sup>682</sup> A suggested form for the directive

---

669. *Id.* § 32-11-105.

670. *Id.* § 32-11-104(a).

671. *Id.* § 32-11-105.

672. *Id.*

673. *Id.* § 32-11-104(a).

674. *Id.* § 32-11-106.

675. *Id.* § 32-11-108(a).

676. *Id.* § 32-11-110(h).

677. *Id.* § 32-11-111.

678. *Id.* § 34-6-204(a) (1996).

679. TEX. HEALTH & SAFETY CODE ANN. §§ 672.001-.021 (West 1992 & Supp. 1998).

680. *Id.* § 672.008(a).

681. *Id.* § 672.003(a).

682. *Id.* § 672.006.

is provided in the statute.<sup>683</sup> It contains instructions regarding life-sustaining procedures. A directive may be oral.<sup>684</sup> Two people must witness the declarant's signature.<sup>685</sup> Neither witness may be related to the declarant, be designated by the declarant to make treatment decisions, be entitled to a portion of the declarant's estate, have a claim in the declarant's estate, be the attending physician or an employee of the attending physician, or be an employee of the health facility where the declarant is a patient.<sup>686</sup> The declarant may revoke the directive at any time regardless of his or her mental or physical state by "canceling, obliterating, burning, tearing," or "otherwise destroying the directive," or by signing a written revocation or by oral revocation.<sup>687</sup> The directive has no effect during the pregnancy of the declarant.<sup>688</sup> If an attending physician cannot comply with a directive then he or she must make a "reasonable effort" to transfer the declarant to another physician.<sup>689</sup>

A health care professional is immune from civil or criminal liability or discipline for unprofessional conduct for following a directive in accordance with this Act unless negligent.<sup>690</sup> The declarant can designate a person to make treatment decisions on behalf of declarant.<sup>691</sup> If no one is named as an agent for the declarant, the individuals listed in the statute may make treatment decisions.<sup>692</sup> A durable power of attorney for health care is available in Texas to name an attorney-in-fact to make health care decisions.<sup>693</sup>

## UTAH

Utah has not substantially adopted any of the Uniform Acts. Its act is the "Personal Choice and Living Will Act."<sup>694</sup> The living will directive applies if the declarant has been diagnosed by two physicians to be in a "terminal condition" or in a "persistent vegetative state."<sup>695</sup> A directive for medical services after injury or illness is also contained in the Act, but the living will directive takes precedence if the declarant is in a terminal situation or in a persistent vegetative state.<sup>696</sup> Only a person

---

683. *Id.* § 672.004.

684. *Id.* § 672.005(b).

685. *Id.* § 672.003(c).

686. *Id.*

687. *Id.* § 672.012(a).

688. *Id.* § 672.019.

689. *Id.* § 672.016(c).

690. *Id.* § 672.015(a), (c)

691. *Id.* § 672.003(d).

692. *Id.* § 672.009(a).

693. TEX. CIV. PRAC. & REM. CODE ANN. §§ 135.001-.018 (West 1997).

694. UTAH CODE ANN. §§ 75-2-1101 to -1119 (Michie 1993 & Supp. 1997).

695. *Id.* § 75-2-1104(4).

696. *Id.* § 75-2-1105.

eighteen or older may sign either directive.<sup>697</sup> The directive must be in substantially the same form as the one in the statutes.<sup>698</sup> The directive must be witnessed by two people neither of whom is the person who signed the document on behalf of the declarant, is related to the declarant, is entitled to a portion of the declarant's estate, is directly financially responsible for the declarant's medical care, or is an agent of a health care facility where the declarant is a patient or resides.<sup>699</sup>

The declarant, or the person who signed the directive may revoke the directive on behalf of the declarant by having the directive "obliterated, burned, torn," or "otherwise destroyed or defaced," or by a written or oral revocation.<sup>700</sup> The directive has no effect during pregnancy.<sup>701</sup> If a health care provider will not comply with the directive, he or she must promptly effect a transfer of the declarant to another physician or health care provider.<sup>702</sup> A health care provider who in good faith complies with a directive is immune from civil or criminal liability and is not deemed to have committed an unprofessional act.<sup>703</sup> An out-of-state directive is presumed to comply with this Act.<sup>704</sup> A special power of attorney is authorized under the Act to name an attorney-in-fact to make decisions regarding health care.<sup>705</sup> If a person does not have a directive, the attending physician has to consult with the individuals listed and obtain written concurrence.<sup>706</sup>

#### VERMONT

Vermont has not substantially adopted any of the Uniform Acts. Its act regulating living wills is the "Terminal Care Document Act."<sup>707</sup> The directive applies when the declarant is in a "terminal state" and is "incapable of participating in decision's about his care."<sup>708</sup> Only a person of sound mind eighteen years of age or older may sign a directive.<sup>709</sup> The form contained in the Act is optional.<sup>710</sup> The form also provides instructions regarding life-sustaining treatment.<sup>711</sup> The directive must be

---

697. *Id.* §§ 75-2-1104(1), -1105(1).

698. *Id.* §§ 75-2-1104(4), -1105(4).

699. *Id.* §§ 75-2-1104(3), -1105(3).

700. *Id.* § 75-2-1111.

701. *Id.* § 75-2-1109.

702. *Id.* § 75-2-1112(2).

703. *Id.* § 75-2-1114.

704. *Id.* § 75-2-1119.

705. *Id.* § 75-2-1106.

706. *Id.* § 75-2-1107(2).

707. VT. STAT. ANN. tit. 18, §§ 5251-5262 (1987).

708. *Id.* § 5253.

709. *Id.*

710. *Id.*

711. *Id.*



witnessed by two people, neither of whom are the declarant's spouse, heir, agent of the attending physician or the attending physician, or has a claim against the declarant's estate.<sup>712</sup> The directive may be orally revoked in the presence of two witnesses or by "burning, tearing," or "obliterating" it.<sup>713</sup> If the health care provider refuses to follow the directive because of "moral conflict," the provider must so inform the declarant or "actively assist in selecting another physician" who will follow the directive.<sup>714</sup> An attending physician is immune from civil or criminal liability for any act done pursuant to a directive.<sup>715</sup> A health care attorney-in-fact may be named with the authority to make decisions regarding life-sustaining treatment.<sup>716</sup>

### VIRGINIA

Virginia has not substantially adopted any of the Uniform Acts. Its act regulating living will directives is the "Health Care Decisions Act."<sup>717</sup> The written directive applies when the declarant has a "terminal condition" and has been diagnosed by his or her attending physician as incapable of making his or her own decisions.<sup>718</sup> Only a competent adult may sign a directive.<sup>719</sup> A suggested form for the written advanced health care directive is provided in the statute.<sup>720</sup> It includes instructions regarding life-sustaining treatment, appointing an agent to make health care decisions, and anatomical gifts.<sup>721</sup> An oral directive is authorized if the declarant is in a terminal condition and is made in the presence of the attending physician and two witnesses.<sup>722</sup> The directive must be signed in front of two witnesses, neither of whom is a spouse or blood relative of the declarant.<sup>723</sup>

The declarant may revoke the directive at any time by a signed writing, physical cancellation or destruction "of the directive," or "by oral expression of intent to revoke."<sup>724</sup> A physician who refuses to comply with the declarant must make a "reasonable effort" to transfer

---

712. *Id.* § 5254.

713. *Id.* § 5257.

714. *Id.* § 5256.

715. *Id.* § 5259.

716. VT. STAT. ANN. tit. 14, §§ 3451-3467 (1989 & Supp. 1997).

717. VA. CODE §§ 54.1-2981 to -2995 (Michie 1994 & Supp. 1997).

718. *Id.* § 54.1-2983.

719. *Id.*

720. *Id.* § 54.1-2984.

721. *Id.*

722. *Id.* § 54.1-2983.

723. *Id.* §§ 54.1-2982, -2983.

724. *Id.* § 54.1-2985

the declarant to another physician.<sup>725</sup> A physician who acts in accordance with this Act pursuant to a directive is immune from civil or criminal liability or charges of unprofessional conduct.<sup>726</sup> An out-of-state directive is considered valid in Virginia if it complies with the laws of the state where it was executed or the laws of Virginia.<sup>727</sup> An agent may be named in the directive to make health care decisions for the declarant if the declarant is unable to make his or her own decisions.<sup>728</sup> If no directive exists, the individuals listed in the statute may have the authorization necessary to make health care decisions on behalf of the patient.<sup>729</sup> Any person may ask the appropriate court to enjoin the provision, withholding, or withdrawal of treatment.<sup>730</sup>

#### WASHINGTON

Washington has not substantially adopted any of the Uniform Acts. Its act regulating living will directives is the "Natural Death Act."<sup>731</sup> The living will applies when the declarant has a "terminal condition" or is in a "permanent unconscious condition."<sup>732</sup> Only an adult person who has the capacity to make health care decisions may sign a directive.<sup>733</sup> A suggested form for the directive is contained in the Act, but it may be modified to include additional instructions.<sup>734</sup> The directive contains instructions regarding life-sustaining treatment.<sup>735</sup> It must be witnessed by two individuals neither of whom is related to the declarant, is entitled to a portion of the declarant's estate or has a claim to it, is the attending physician or an employee of the attending physician, or is an employee of the health care facility where the declarant is a patient.<sup>736</sup>

The declarant may revoke the directive without regard to his or her mental state or capacity by being "canceled, defaced, obliterated, burned, torn," or otherwise destroyed, or by written revocation or by verbal expression.<sup>737</sup> The directive has no effect during the declarant's pregnancy if the attending physician is aware of the pregnancy.<sup>738</sup> The

---

725. *Id.* § 54.1-2987

726. *Id.* § 54.1-2988

727. *Id.* § 54.1-2993

728. *Id.* § 54.1-2984.

729. *Id.* § 54.1-2986(A).

730. *Id.* § 54.1-2986(E).

731. WASH. REV. CODE ANN. §§ 70-122.010 to -.920 (West 1992 & Supp. 1998).

732. *Id.* § 70-122.030(1).

733. *Id.* §§ 70-122.020(1), -.030(1).

734. *Id.* § 70-122.030(1).

735. *Id.*

736. *Id.* § 70-122.030(1).

737. *Id.* § 70-122.040(1).

738. *Id.* § 70-122.030(1).

attending physician or health care facility must inform the declarant or the declarant's representative of any policy that precludes them from following the directive.<sup>739</sup> A physician who relies in good faith on a directive is immune from civil or criminal liability or discipline for unprofessional conduct for following the directive.<sup>740</sup> Out-of-state directives are valid in Washington to the extent permitted by Washington law.<sup>741</sup> A health care attorney-in-fact may be named.<sup>742</sup>

#### WEST VIRGINIA

West Virginia has not substantially adopted any of the Uniform Acts. Its act regulating living will directives is the "West Virginia Natural Death Act."<sup>743</sup> The directive applies when the declarant has been certified by two physicians, one of whom is the attending physician, as having a "terminal condition" or being in a "persistent vegetative state."<sup>744</sup> Only a mentally competent person eighteen or older may execute a directive.<sup>745</sup> The suggested statutory directive form may be modified or additional terms added.<sup>746</sup> The directive contains instructions regarding life-sustaining treatment.<sup>747</sup> It must be witnessed by two people, neither of whom is the person who signed the directive on behalf of the declarant, is related to the declarant, is entitled to a portion of the declarant's estate, is directly financially responsible for the declarant's medical care, or is the attending physician or health care representative or proxy of the declarant.<sup>748</sup> The signatures and attestations contained in the directive must also be notarized.<sup>749</sup>

The declarant may revoke the living will without regard to his or her mental state by destroying the directive, by written revocation, or by verbal expression of the intent to revoke.<sup>750</sup> A physician who will not comply with a directive must effect the transfer of the declarant to another physician.<sup>751</sup> A health care provider, who in good faith and pursuant to "reasonable medical standards" follows a valid directive, is immune from civil or criminal liability.<sup>752</sup> An out-of-state directive is

---

739. *Id.* § 70-122.060(2).

740. *Id.* § 70-122.051.

741. *Id.* § 70-122.030(3).

742. *Id.* § 11.94.010(3).

743. W. VA. CODE §§ 16-30-1 to -13 (1995).

744. *Id.* § 16-30-3(e).

745. *Id.* § 16-30-3(a).

746. *Id.* § 16-30-3(e).

747. *Id.*

748. *Id.* § 16-30-3(a), (b).

749. *Id.* § 16-30-3(a).

750. *Id.* § 16-30-4.

751. *Id.* § 16-30-7(b).

752. *Id.* § 16-30-7(a).

valid in West Virginia if it was executed in compliance with the laws of West Virginia or the laws where the directive was executed.<sup>753</sup> A health care attorney-in-fact may be named who has authority to make decisions regarding enforcing a living will.<sup>754</sup>

#### WISCONSIN

Wisconsin has not substantially adopted any of the Uniform Acts. Its act regulating living will directives is the "Declarations to Physicians and Do-Not-Resuscitate Orders Act."<sup>755</sup> The directive applies when the attending physician and one other physician has diagnosed the declarant to be in a "terminal condition" or he or she is in a "persistent vegetative state."<sup>756</sup> Only a person of sound mind eighteen or older may sign a directive.<sup>757</sup> The Department of Health and Family Services prepares and distributes copies of the directive.<sup>758</sup> The directive must match the form provided in the Act.<sup>759</sup> The directive must be signed by two witnesses, neither of whom is related to the declarant, is entitled to any portion of the estate, has a claim in the estate of the declarant, is directly financially responsible for the declarant's medical care, is a health care provider for the declarant, or is an employee of the health care provider.<sup>760</sup> The declarant may revoke the directive by being "canceled, defaced, obliterated, burned, torn," or "otherwise destroyed," or by a written or oral revocation.<sup>761</sup> The directive has no effect while the declarant is diagnosed as pregnant by the attending physician.<sup>762</sup> A health care provider that cannot comply with a directive must make a "good faith" effort to transfer the declarant to another health care provider.<sup>763</sup> A health care provider is immune from civil or criminal liability or charges of unprofessional conduct for following a directive.<sup>764</sup> An out-of-state directive is valid to the extent that it is consistent with the laws of Wisconsin, if it complies with the laws of the state where it was executed.<sup>765</sup> A health care power of attorney is authorized.<sup>766</sup>

---

753. *Id.* § 16-30-11.

754. *See generally id.* §§ 16-30A-1 to -20 (1998).

755. WIS. STAT. ANN. §§ 154.01-.29 (West 1997).

756. *Id.* § 154.03(1).

757. *Id.*

758. *Id.* § 154.03(2).

759. *Id.*

760. *Id.* § 154.03(1).

761. *Id.* § 154.05(1).

762. *Id.* § 154.07(2).

763. *Id.* § 154.07(1)(a)(3).

764. *Id.* § 154.07(1).

765. *Id.* § 154.11(9).

766. *Id.* §§ 155.01-.80 (West 1997).

## WYOMING

Wyoming has not substantially adopted any of the Uniform Acts. Its act is the "Living Will Act."<sup>767</sup> The living will directive applies when the declarant has been diagnosed by his or her attending physician to be in a "terminal condition" and death will occur whether or not life-sustaining procedures will be used.<sup>768</sup> Only an adult may sign a directive.<sup>769</sup> The directive may be either in the form provided in the Act, or it may be modified.<sup>770</sup> The statutory form contains instructions for life-sustaining treatment and the appointment of a health care agent.<sup>771</sup> The declarant's signature must be witnessed by two people, neither of whom is the person who signed on behalf of the declarant, is related to the declarant, is entitled to a portion of the declarant's estate, or is directly financially responsible for the declarant's medical care.<sup>772</sup> The directive may be revoked at any time by the declarant by being "obliterated, burned, torn," or "otherwise destroyed or defaced," or by a written or oral expression of intent to revoke.<sup>773</sup> The directive has no effect during the time the declarant is diagnosed as pregnant by the attending physician.<sup>774</sup>

A health care provider who refuses to comply with a directive must attempt to effect the transfer of the declarant to another physician.<sup>775</sup> A physician who in "good faith" and "pursuant to reasonable medical standards" follows a directive in compliance with this Act is not subject to criminal or civil liability.<sup>776</sup> A health care proxy can be named in the directive to make treatment decisions for the declarant when the declarant is comatose or otherwise unable to make treatment decisions.<sup>777</sup> If a person does not have a directive and is in a terminal condition or irreversible coma, the physician must contact all family members to see if they agree with the decision to withdraw or withhold life-sustaining procedures.<sup>778</sup> A health care attorney-in-fact may be named in a health care power of attorney.<sup>779</sup>

---

767. WYO. STAT. ANN. §§35-22-101 to -208 (Michie 1997).

768. *Id.* § 35-22-102(d).

769. *Id.* § 35-22-102(a).

770. *Id.* § 35-22-102(d).

771. *Id.*

772. *Id.* § 35-22-102(a).

773. *Id.* § 35-22-103(a).

774. *Id.* § 35-22-102(b).

775. *Id.* § 35-22-104(b).

776. *Id.* § 35-22-106.

777. *Id.* § 35-22-102(d).

778. *Id.* § 35-22-105(b).

779. *Id.* §§ 3-5-201 to -213 (Michie 1997).

#### IV. CONCLUSION

Every state currently has some kind of statutory regulation that allows a person to make plans for end-of-life treatment decisions in the event he or she becomes incapacitated or incompetent. Most states have a living will law that may or may not include a provision allowing the nomination of a health care agent. This agent's authority may or may not be limited to decision making in the living will context, for example, when the person is incapacitated and in a terminal condition or permanently unconscious. Many states allow an agent or health care attorney-in-fact to be named in a separate document governed by a separate act other than the living will act. Many states also allow a surrogate decision maker to be named, who may make decisions for an incapacitated or incompetent person who does not have a valid directive.

Within the acts there are several other differences. Most acts do not allow the withholding or withdrawal of life support mechanisms from a pregnant declarant under any circumstances. Others require that the fetus be viable. Some do not mention pregnancy or leave it to the declarant for instructions on how to be treated if pregnant. Another interesting difference is the methods available for revoking a directive. Some states require that very specific methods of revocation be used, reminiscent of will revocation statutes. Others permit any method of revocation that evidences the intent to revoke. Some states allow only a competent person to revoke the directive. Others give an incompetent person the right to revoke a directive which could lead to the revocation of the directive by the incompetent person and the incompetent person then being unable to execute a replacement directive.

The laws governing advanced directives are continuing to develop both in response to attempts to unify the laws and to better handle individuals planning needs. The longer these advanced directives are around, the easier it will be for state legislatures to finely tune statutory acts regulating living will and other types of advanced health care directives.

