

AMENDMENTS TO LB247

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 15 of this act shall be known and may be
4 cited as the Advance Mental Health Care Directives Act.

5 Sec. 2. (1) The Legislature finds that:

6 (a) Issues implicated in advance planning for end-of-life care are
7 distinct from issues implicated in advance planning for mental health
8 care;

9 (b) Mental illness can be episodic and include periods of incapacity
10 which obstruct an individual's ability to give informed consent and
11 impede the individual's access to mental health care;

12 (c) An acute mental health episode can induce an individual to
13 refuse treatment when the individual would otherwise consent to treatment
14 if the individual's judgment were unimpaired;

15 (d) An individual may lose capacity without meeting the criteria for
16 civil commitment in Nebraska; and

17 (e) An individual with mental illness has the same right to plan in
18 advance for treatment as an individual planning for end-of-life care.

19 (2) The purposes of the Advance Mental Health Care Directives Act
20 are to:

21 (a) Facilitate advance planning to help (i) prevent unnecessary
22 involuntary commitment and incarceration, (ii) improve patient safety and
23 health, (iii) improve mental health care, and (iv) enable an individual
24 to exercise control over such individual's mental health treatment; and

25 (b) Protect patient safety, autonomy, and health by allowing an
26 individual to create an advance mental health care directive to instruct
27 and direct the individual's mental health care.

1 Sec. 3. (1) The Legislature hereby declares that an advance mental
2 health care directive can only accomplish the purposes stated in section
3 2 of this act if an individual may use an advance mental health care
4 directive to:

5 (a) Set forth instructions for any foreseeable mental health care
6 when the individual loses capacity to make decisions regarding such
7 mental health care, including, but not limited to, consenting to
8 inpatient mental health treatment, psychotropic medication, or
9 electroconvulsive therapy;

10 (b) Dictate whether the directive is revocable during periods of
11 incapacity and provide consent to treatment despite illness-induced
12 refusals;

13 (c) Choose the standard by which the directive becomes active; and

14 (d) In compliance with the federal Health Insurance Portability and
15 Accountability Act of 1996, include in the directive a release
16 authorization form stating the names of persons to whom information
17 regarding the mental health treatment of the principal may be disclosed
18 during the time the directive is activated, including, but not limited
19 to, health care professionals, mental health care professionals, family,
20 friends, and other interested persons with whom treatment providers are
21 allowed to communicate if the principal loses capacity.

22 (2) An individual with capacity has the right to control decisions
23 relating to the individual's mental health care unless subject to a court
24 order involving mental health care under any other provision of law.

25 Sec. 4. For purposes of the Advance Mental Health Care Directives
26 Act:

27 (1) Activation means the point at which an advance mental health
28 care directive is used as the basis for decisionmaking as provided in
29 section 9 of this act;

30 (2) Attorney in fact means an individual designated under a power of
31 attorney for health care to make mental health care decisions for a

1 principal;

2 (3)(a) Capacity means having both (i) the ability to understand and
3 appreciate the nature and consequences of mental health care decisions,
4 including the benefits and risks of each, and alternatives to any
5 proposed mental health treatment, and to reach an informed decision, and
6 (ii) the ability to communicate in any manner such mental health care
7 decision.

8 (b) An individual's capacity is evaluated in relation to the demands
9 of a particular mental health care decision;

10 (4) Principal means an individual who is nineteen years of age or
11 older with capacity who provides instructions, preferences, or both
12 instructions and preferences for any foreseeable mental health care in an
13 advance mental health care directive; and

14 (5) Relative means the spouse, child, parent, sibling, grandchild,
15 or grandparent, by blood, marriage, or adoption, of an individual.

16 Sec. 5. (1) An advance mental health care directive shall:

17 (a) Be in writing;

18 (b) Be dated and signed by the principal or, subject to subsection
19 (5) of this section, another individual acting at the direction of the
20 principal if the principal is physically unable to sign. The attorney in
21 fact of the principal may not sign the directive for the principal;

22 (c) State whether the principal wishes to be able to revoke the
23 directive at any time or whether the directive remains irrevocable during
24 periods of incapacity. Failure to clarify whether the directive is
25 revocable does not render it unenforceable. If the directive fails to
26 state whether it is revocable or irrevocable, the principal may revoke it
27 at any time;

28 (d) State that the principal affirms that the principal is aware of
29 the nature of the directive and signs the directive freely and
30 voluntarily; and

31 (e)(i) Be signed in the presence of a notary public who is not the

1 attorney in fact of the principal; or

2 (ii) Be witnessed in writing by at least two disinterested adults as
3 provided in subsections (4) and (5) of this section.

4 (2) An advanced mental health care directive shall be valid upon
5 execution.

6 (3) To be irrevocable during periods of incapacity, the directive
7 shall state that the directive remains irrevocable during periods of
8 incapacity.

9 (4) A witness shall not be:

10 (a) The principal's attending physician or a member of the
11 principal's mental health treatment team at the time of executing the
12 directive;

13 (b) The principal's spouse, parent, child, grandchild, sibling,
14 presumptive heir, or known devisee at the time of the witnessing;

15 (c) In a romantic or dating relationship with the principal;

16 (d) The attorney in fact of the principal or a person designated to
17 make mental health care decisions for the principal; or

18 (e) The owner, operator, employee, or relative of an owner or
19 operator of a treatment facility at which the principal is receiving
20 care.

21 (5) Each witness shall attest that:

22 (a) The witness was present when the principal signed the directive
23 or, if the principal was physically unable to sign the directive, when
24 another individual signed the directive as provided in subdivision (1)(b)
25 of this section;

26 (b) The principal did not appear incapacitated or under undue
27 influence or duress when the directive was signed; and

28 (c) The principal presented identification or the witness personally
29 knew the principal when the directive was signed.

30 (6) A principal may, in compliance with the federal Health Insurance
31 Portability and Accountability Act of 1996, include in the directive a

1 release authorization form stating the name of persons to whom
2 information regarding the mental health treatment of the principal may be
3 disclosed during the time the directive is activated, including, but not
4 limited to, health care professionals, mental health care professionals,
5 family, friends, and other interested persons with whom treatment
6 providers are allowed to communicate if the principal loses capacity.

7 Sec. 6. (1) Except as provided in subsection (2) of this section,
8 in an advance mental health care directive, a principal may issue
9 instructions, preferences, or both instructions and preferences
10 concerning the principal's mental health treatment. If the principal has
11 designated an attorney in fact under a power of attorney for health care,
12 the advance mental health care directive shall be binding on the
13 principal's attorney in fact. The instructions and preferences may
14 address matters including, but not limited to:

15 (a) Consent to or refusal of specific types of mental health
16 treatment, such as inpatient mental health treatment, psychotropic
17 medication, or electroconvulsive therapy. Consent to electroconvulsive
18 therapy must be express;

19 (b) Treatment facilities and care providers;

20 (c) Alternatives to hospitalization if twenty-four-hour care is
21 deemed necessary;

22 (d) Physicians who will provide treatment;

23 (e) Medications for psychiatric treatment;

24 (f) Emergency interventions, including seclusion, restraint, or
25 medication;

26 (g) The provision of trauma-informed care and treatment;

27 (h) In compliance with the federal Health Insurance Portability and
28 Accountability Act of 1996, a release authorization form stating the name
29 of persons to whom information regarding the mental health treatment of
30 the principal may be disclosed during the time the directive is
31 activated, including persons who should be notified immediately of

1 admission to an inpatient facility;

2 (i) Individuals who should be prohibited from visitation; and

3 (j) Other instructions or preferences regarding mental health care.

4 (2) A principal may not consent to or authorize an attorney in fact
5 to consent to psychosurgery in a directive. If such consent or
6 authorization is expressed in the directive, this does not revoke the
7 entire directive, but such a provision is unenforceable.

8 Sec. 7. (1) An advance mental health care directive, including an
9 irrevocable advance mental health care directive, shall remain in effect
10 until it expires according to its terms or until it is revoked by the
11 principal, whichever is earlier.

12 (2) A principal may revoke the directive even if the principal is
13 incapacitated unless the principal has made the directive irrevocable
14 during periods of incapacity pursuant to subsection (3) of section 5 of
15 this act.

16 (3) A principal with capacity or a principal without capacity who
17 did not make the directive irrevocable during periods of incapacity may
18 revoke the directive by:

19 (a) A written statement revoking the directive; or

20 (b) A subsequent directive that revokes the original directive. If
21 the subsequent directive does not revoke the original directive in its
22 entirety, only inconsistent provisions in the original directive are
23 revoked.

24 (4) When a principal with capacity consents to treatment that is
25 different than the treatment requested in the directive or refuses
26 treatment that the principal requested in the directive, this consent or
27 refusal does not revoke the entire directive but is a waiver of the
28 inconsistent provision.

29 Sec. 8. (1) A principal has a right to form a self-binding
30 arrangement for mental health care in an advance mental health care
31 directive. A self-binding arrangement allows the principal to obtain

1 mental health treatment in the event that an acute mental health episode
2 renders the principal incapacitated and induces the principal to refuse
3 treatment.

4 (2) To provide advance consent to inpatient treatment despite the
5 principal's illness-induced refusal, a principal shall, in such
6 directive:

7 (a) Make the directive irrevocable pursuant to subsection (3) of
8 section 5 of this act; and

9 (b) Consent to admission to an inpatient treatment facility.

10 (3) To provide advance consent to administration of psychotropic
11 medication despite the principal's illness-induced refusal of medication,
12 a principal shall, in such directive:

13 (a) Make the directive irrevocable pursuant to subsection (3) of
14 section 5 of this act; and

15 (b) Consent to administration of psychotropic medication.

16 Sec. 9. (1) Unless a principal designates otherwise in the advance
17 mental health care directive, a directive becomes active when the
18 principal loses capacity. Activation is the point at which the directive
19 shall be used as the basis for decisionmaking and shall dictate mental
20 health treatment of the principal.

21 (2) The principal may designate in the directive an activation
22 standard other than incapacity by describing the circumstances under
23 which the directive becomes active.

24 Sec. 10. (1) Except as otherwise provided in subsection (2) of this
25 section, a specific grant of authority to an attorney in fact to consent
26 to the principal's inpatient mental health treatment or psychotropic
27 medication is not required to convey authority to the attorney in fact to
28 consent to such treatments. An attorney in fact may consent to such
29 treatments for the principal if the principal's written grant of
30 authority in the principal's advance mental health care directive is
31 sufficiently broad to encompass these decisions.

1 (2) When an incapacitated principal refuses inpatient mental health
2 treatment or psychotropic medication, the principal's attorney in fact
3 only has the authority to consent to such treatments for the principal if
4 the principal's directive is irrevocable and expressly authorizes the
5 attorney in fact to consent to the applicable treatment. An attorney in
6 fact shall only have the authority to consent to electroconvulsive
7 therapy for the principal if the principal's directive is irrevocable and
8 expressly authorizes the attorney in fact to consent to electroconvulsive
9 therapy.

10 (3) An attorney in fact's decisions for the principal must be in
11 good faith and consistent with the principal's instructions expressed in
12 the principal's directive. If the directive fails to address an issue,
13 the attorney in fact shall make decisions in accordance with the
14 principal's instructions or preferences otherwise known to the attorney
15 in fact. If the attorney in fact does not know the principal's
16 instructions or preferences, the attorney in fact shall make decisions in
17 the best interests of the principal.

18 (4) If the principal grants the attorney in fact authority to make
19 decisions for the principal in circumstances in which the principal still
20 has capacity, the principal's decisions when the principal has capacity
21 shall nonetheless override the attorney in fact's decisions.

22 Sec. 11. (1) Despite activation, an advance mental health care
23 directive, including an irrevocable directive, shall not prevail over
24 contemporaneous preferences expressed by a principal who has capacity.

25 (2) If an individual has a power of attorney for health care and an
26 advance mental health care directive and there is any conflict between
27 the two documents, the advance mental health care directive controls with
28 regard to any mental health care instructions or preferences.

29 Sec. 12. (1) If the principal forms a self-binding arrangement for
30 treatment in an advance mental health care directive but then refuses
31 admission to an inpatient treatment facility despite the directive's

1 instructions to admit, the inpatient treatment facility shall respond as
2 follows:

3 (a) The facility shall, as soon as practicable, obtain the informed
4 consent of the principal's attorney in fact, if the principal has an
5 attorney in fact;

6 (b) Two licensed physicians shall, within twenty-four hours after
7 the principal's arrival at the facility, evaluate the principal to
8 determine whether the principal has capacity and shall document in the
9 principal's medical record a summary of findings, evaluations, and
10 recommendations; and

11 (c) If the evaluating physicians determine the principal lacks
12 capacity, the principal shall be admitted into the inpatient treatment
13 facility pursuant to the principal's directive.

14 (2) After twenty-one days following the date of admission, if the
15 principal has not regained capacity or has regained capacity but refuses
16 to consent to remain for additional treatment, the facility shall dismiss
17 the principal from the facility's care and the principal shall be
18 released during daylight hours or to the care of an individual available
19 only during nondaylight hours. This subsection does not apply if the
20 principal is detained pursuant to involuntary commitment standards.

21 (3) A principal may specify in the advance mental health care
22 directive a shorter amount of time than twenty-one days.

23 Sec. 13. If a principal with an irrevocable advance mental health
24 care directive consenting to inpatient treatment refuses psychotropic
25 medication through words or actions, psychotropic medication may only be
26 administered by or under the immediate direction of a licensed
27 psychiatrist, and only if:

28 (1) The principal expressly consented to psychotropic medication in
29 the principal's irrevocable directive;

30 (2) The principal's attorney in fact, if the principal has an
31 attorney in fact, consents to psychotropic medication; and

1 (3) Two of the following health care professionals recommend, in
2 writing, treatment with the specific psychotropic medication: A licensed
3 psychiatrist, physician, physician assistant, or advanced practice
4 registered nurse or any other health care professional licensed to
5 diagnose illnesses and prescribe drugs for mental health care.

6 Sec. 14. (1) A health care professional acting or declining to act,
7 in accord with reasonable medical standards, in good faith reliance upon
8 the principal's advance mental health care directive, and, if the
9 principal has an attorney in fact, in reliance upon the decision made by
10 a person whom the health care professional in good faith believes is the
11 attorney in fact acting pursuant to the advance mental health care
12 directive, shall not be subject to criminal prosecution, civil liability,
13 or discipline for unprofessional conduct for so acting or declining to
14 act.

15 (2) In the absence of knowledge of the revocation of an advance
16 mental health care directive, a health care professional who acts or
17 declines to act based upon the advance mental health care directive and
18 in accord with reasonable medical standards shall not be subject to
19 criminal prosecution, civil liability, or discipline for unprofessional
20 conduct for so acting or declining to act.

21 (3) Nothing in the Advance Mental Health Care Directives Act shall
22 limit the liability of an attorney in fact or a health care professional
23 for a negligent act or omission.

24 Sec. 15. (1) An advance mental health care directive shall be in a
25 form that complies with the Advance Mental Health Care Directives Act and
26 may be in the form provided in this subsection.

27 ADVANCE MENTAL HEALTH CARE DIRECTIVE

28 I, being an adult nineteen years of age or older
29 and of sound mind, freely and voluntarily make this directive for mental
30 health care to be followed if it is determined that my ability to receive

1 and evaluate information effectively or communicate decisions is impaired
2 to such an extent that I lack the capacity to refuse or consent to mental
3 health care. "Mental health care" includes, but is not limited to,
4 treatment of mental illness with psychotropic medication, admission to
5 and retention in a treatment facility for a period up to 21 days, or
6 electroconvulsive therapy.

7 I understand that I may become incapable of giving or withholding
8 informed consent for mental health care due to the symptoms of a
9 diagnosed mental disorder. These symptoms may include, but not be limited
10 to:

11
12

13 PSYCHOTROPIC MEDICATIONS

14 If I become incapable of giving or withholding informed consent for
15 mental health care, my wishes regarding psychotropic medications,
16 including classes of medications if appropriate, are as follows (check
17 one or both of the following, if applicable):

18 [] I consent to the administration of the following medications:

19
20

21 [] I do not consent to the administration of the following
22 medications:

23
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25 Conditions or limitations, if any:

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28 ADMISSION TO AND RETENTION IN FACILITY

29 If I become incapable of giving or withholding informed consent for
30 mental health care, my wishes regarding admission to and retention in a

1 health care facility for mental health care are as follows (check one of
2 the following, if applicable):

3 I consent to being admitted to a treatment facility for mental
4 health care.

5 I do not consent to being admitted to a treatment facility for
6 mental health care.

7 This directive cannot, by law, provide consent to retain me in a
8 treatment facility for more than 21 days.

9 Conditions or limitations, if any:
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12 ELECTROCONVULSIVE THERAPY

13 If I become incapable of giving or withholding informed consent for
14 mental health care, my wishes regarding electroconvulsive therapy are as
15 follows (check one of the following, if applicable):

16 I consent to the administration of electroconvulsive therapy.

17 I do not consent to the administration of electroconvulsive
18 therapy.

19 Conditions or limitations, if any:
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21

22 DESIGNATION OF IRREVOCABILITY DURING INCAPACITY

23 If I become incapable of giving or withholding informed consent for
24 mental health care, my advance mental health care directive remains
25 irrevocable during such period of incapacity:

26 Yes

27 No

28 If yes, the directive is irrevocable during such period of
29 incapacity with regard to:

30 Admission and retention in a treatment facility for mental health

1 care for up to 21 days;

2 Psychotropic medication as follows:

3;

4 Electroconvulsive therapy; or

5 All of the above.

6 If there is anything in this document that you do not understand,
7 you should ask a lawyer to explain it to you. This directive will not be
8 valid unless it is signed in the presence of a notary public or signed by
9 two qualified witnesses who are either personally known to you or verify
10 your identity and who are present when you sign or acknowledge your
11 signature.

12 SELECTION OF PHYSICIAN

13 (OPTIONAL)

14 If it becomes necessary to determine if I have become incapable of
15 giving or withholding informed consent for mental health care, I
16 choose of (address of
17 licensed physician) to be one of the two licensed physicians who will
18 determine whether I am incapable. If that licensed physician is
19 unavailable, that physician's designee shall serve as one of the two
20 licensed physicians who will determine whether I am incapable.

21 ADDITIONAL REFERENCES OR INSTRUCTIONS

22

23

24 Conditions or limitations, if any:

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27 This document will continue in effect until you revoke it as
28 described below or until a date you designate in this document. If you
29 wish to have this document terminate on a certain date, please indicate:

30

1 advance mental health care directive will be followed only if you are
2 incapable of making treatment decisions. Otherwise, you will be
3 considered capable to give or withhold consent for the treatments.

4 If you have an attorney in fact appointed under a power of attorney
5 for health care, your attorney in fact has a duty to act consistent with
6 your desires as stated in this document or, if your desires are not
7 stated or otherwise made known to the attorney in fact, to act in a
8 manner consistent with what your attorney in fact in good faith believes
9 to be in your best interest. The person has the right to withdraw from
10 acting as your attorney in fact at any time.

11 You have the right to revoke this document in whole or in part at
12 any time you have been determined to be capable of giving or withholding
13 informed consent for mental health care. A revocation is effective when
14 it is communicated to your attending health care professional in writing
15 and is signed by you. The revocation may be in a form similar to the
16 following:

17 REVOCATION

18 I,, knowingly and voluntarily revoke
19 my advance mental health care directive as indicated (check one of the
20 following):

21 [] I revoke my entire directive.

22 [] I revoke the following portion or portions of my directive:

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(Signature of Principal)

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(Printed Name of Principal)

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(Date)

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EVALUATION BY HEALTH CARE PROFESSIONAL

(OPTIONAL)

I,, have evaluated the principal and determined that the principal is capable of giving or withholding informed consent for mental health care.

.....

(Signature of health care professional)

.....

(Printed Name of health care professional)

.....

(Date)

(2) The Department of Health and Human Services may adopt and promulgate rules and regulations to provide information to the public regarding the Advance Mental Health Care Directives Act. The rules and regulations may include information relating to the need to review and update an advance mental health care directive in a timely manner and the creation of a wellness recovery action plan upon dismissal from a treatment facility for ongoing mental health issues and rehabilitation goals. The department shall publish the form in this section on its web site for use by the public.

Sec. 16. Section 30-3402, Reissue Revised Statutes of Nebraska, is amended to read:

30-3402 For purposes of sections 30-3401 to 30-3432:

(1) Adult shall mean any person who is nineteen years of age or older or who is or has been married;

(2) Attending physician shall mean the physician, selected by or assigned to a principal, who has primary responsibility for the care and treatment of such principal;

(3) Attorney in fact shall mean an adult properly designated and authorized under sections 30-3401 to 30-3432 to make health care

1 decisions for a principal pursuant to a power of attorney for health care
2 and shall include a successor attorney in fact;

3 (4) Health care shall mean any treatment, procedure, or intervention
4 to diagnose, cure, care for, or treat the effects of disease, injury, and
5 degenerative conditions. Health care shall include mental health care;

6 (5) Health care decision shall include consent, refusal of consent,
7 or withdrawal of consent to health care. Health care decision shall not
8 include (a) the withdrawal or withholding of routine care necessary to
9 maintain patient comfort, (b) the withdrawal or withholding of the usual
10 and typical provision of nutrition and hydration, or (c) the withdrawal
11 or withholding of life-sustaining procedures or of artificially
12 administered nutrition or hydration, except as provided by sections
13 30-3401 to 30-3432;

14 (6) Health care provider shall mean an individual or facility
15 licensed, certified, or otherwise authorized or permitted by law to
16 administer health care in the ordinary course of business or professional
17 practice and shall include all facilities defined in the Health Care
18 Facility Licensure Act;

19 (7) Except as otherwise provided in section 4 of this act for an
20 advance mental health care directive, incapable ~~Incapable~~ shall mean the
21 inability to understand and appreciate the nature and consequences of
22 health care decisions, including the benefits of, risks of, and
23 alternatives to any proposed health care or the inability to communicate
24 in any manner an informed health care decision;

25 (8) Life-sustaining procedure shall mean any medical procedure,
26 treatment, or intervention that (a) uses mechanical or other artificial
27 means to sustain, restore, or supplant a spontaneous vital function and
28 (b) when applied to a person suffering from a terminal condition or who
29 is in a persistent vegetative state, serves only to prolong the dying
30 process. Life-sustaining procedure shall not include routine care
31 necessary to maintain patient comfort or the usual and typical provision

1 of nutrition and hydration;

2 (9) Mental health care shall include, but not be limited to, mental
3 health care and treatment expressly provided for in the Advance Mental
4 Health Care Directives Act;

5 (10) (9) Persistent vegetative state shall mean a medical condition
6 that, to a reasonable degree of medical certainty as determined in
7 accordance with currently accepted medical standards, is characterized by
8 a total and irreversible loss of consciousness and capacity for cognitive
9 interaction with the environment and no reasonable hope of improvement;

10 (11) (10) Power of attorney for health care shall mean a power of
11 attorney executed in accordance with sections 30-3401 to 30-3432 which
12 authorizes a designated attorney in fact to make health care decisions
13 for the principal when the principal is incapable;

14 (12) (11) Principal shall mean an adult who, when competent, confers
15 upon another adult a power of attorney for health care;

16 (13) (12) Reasonably available shall mean that a person can be
17 contacted with reasonable efforts by an attending physician or another
18 person acting on behalf of the attending physician;

19 (14) (13) Terminal condition shall mean an incurable and
20 irreversible medical condition caused by injury, disease, or physical
21 illness which, to a reasonable degree of medical certainty, will result
22 in death regardless of the continued application of medical treatment
23 including life-sustaining procedures; and

24 (15) (14) Usual and typical provision of nutrition and hydration
25 shall mean delivery of food and fluids orally, including by cup, eating
26 utensil, bottle, or drinking straw.

27 Sec. 17. Section 30-3405, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 30-3405 (1)(a) (1) The following shall not qualify to witness a
30 power of attorney for health care: Any person who at the time of
31 witnessing is the The principal's spouse, parent, child, grandchild,

1 sibling, presumptive heir, known devisee ~~at the time of the witnessing,~~
2 attending physician, mental health treatment team member, romantic or
3 dating partner, or attorney in fact; or an employee of a life or health
4 insurance provider for the principal.

5 (b) No more than one witness may be an administrator or employee of
6 a health care provider who is caring for or treating the principal.

7 (2) Each witness shall make the written declaration in substantially
8 the form prescribed in section 30-3408.

9 Sec. 18. Section 30-3406, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 30-3406 None of the following may serve as an attorney in fact:

12 (1) The attending physician or a member of the mental health
13 treatment team of the principal;

14 (2) An employee of the attending physician or a member of the mental
15 health treatment team of the principal who is unrelated to the principal
16 by blood, marriage, or adoption;

17 (3) A person unrelated to the principal by blood, marriage, or
18 adoption who is an owner, operator, or employee of a health care provider
19 in or of which the principal is a patient or resident; and

20 (4) A person unrelated to the principal by blood, marriage, or
21 adoption if, at the time of the proposed designation, he or she is
22 presently serving as an attorney in fact for ten or more principals.

23 Sec. 19. Section 30-3408, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 30-3408 (1) A power of attorney for health care executed on or after
26 September 9, 1993, shall be in a form which complies with sections
27 30-3401 to 30-3432 and may be in the form provided in this subsection.

28 POWER OF ATTORNEY FOR HEALTH CARE

29 I appoint, whose address is, and
30 whose telephone number is, as my attorney in fact for health

1 care. I appoint, whose address
2 is, and whose telephone number
3 is, as my successor attorney in fact for health care. I
4 authorize my attorney in fact appointed by this document to make health
5 care decisions for me when I am determined to be incapable of making my
6 own health care decisions. I have read the warning which accompanies this
7 document and understand the consequences of executing a power of attorney
8 for health care.

9 I direct that my attorney in fact comply with the following
10 instructions or limitations:

11 I direct that my attorney in fact comply with the following
12 instructions on life-sustaining treatment:
13 (optional)

14 I direct that my attorney in fact comply with the following
15 instructions on artificially administered nutrition and hydration:
16 (optional)

17 I HAVE READ THIS POWER OF ATTORNEY FOR HEALTH CARE. I UNDERSTAND
18 THAT IT ALLOWS ANOTHER PERSON TO MAKE LIFE AND DEATH DECISIONS FOR ME IF
19 I AM INCAPABLE OF MAKING SUCH DECISIONS. I ALSO UNDERSTAND THAT I CAN
20 REVOKE THIS POWER OF ATTORNEY FOR HEALTH CARE AT ANY TIME BY NOTIFYING MY
21 ATTORNEY IN FACT, MY PHYSICIAN, OR THE FACILITY IN WHICH I AM A PATIENT
22 OR RESIDENT. I ALSO UNDERSTAND THAT I CAN REQUIRE IN THIS POWER OF
23 ATTORNEY FOR HEALTH CARE THAT THE FACT OF MY INCAPACITY IN THE FUTURE BE
24 CONFIRMED BY A SECOND PHYSICIAN.

25
26 (Signature of person making designation/date)

27 DECLARATION OF WITNESSES

28 We declare that the principal is personally known to us, that the
29 principal signed or acknowledged his or her signature on this power of
30 attorney for health care in our presence, that the principal appears to

1 be of sound mind and not under duress or undue influence, and that
2 neither of us nor the principal's attending physician is the person
3 appointed as attorney in fact by this document.

4 Witnessed By:

5 (Signature of Witness/Date) (Printed Name of Witness)

6 (Signature of Witness/Date) (Printed Name of Witness)

7 (Signature of Witness/Date) (Printed Name of Witness)

8 (Signature of Witness/Date) (Printed Name of Witness)

9 OR

10 State of Nebraska,)

11)ss.

12 County of)

13 On this day of 20...., before me,, a
14 notary public in and for County, personally
15 came, personally to me known to be the identical person whose
16 name is affixed to the above power of attorney for health care as
17 principal, and I declare that he or she appears in sound mind and not
18 under duress or undue influence, that he or she acknowledges the
19 execution of the same to be his or her voluntary act and deed, and that I
20 am not the attorney in fact or successor attorney in fact designated by
21 this power of attorney for health care.

22 Witness my hand and notarial seal at in such county the
23 day and year last above written.

24

25 Seal Signature of Notary Public

26 (2) A power of attorney for health care may be included in a durable
27 power of attorney drafted under the Nebraska Uniform Power of Attorney
28 Act or in any other form if the power of attorney for health care
29 included in such durable power of attorney or any other form fully
30 complies with the terms of section 30-3404.

1 (3) A power of attorney for health care executed prior to January 1,
2 1993, shall be effective if it fully complies with the terms of section
3 30-3404.

4 (4) A power of attorney for health care which is executed in another
5 state and is valid under the laws of that state shall be valid according
6 to its terms.

7 (5) A power of attorney for health care may include an advance
8 mental health care directive under the Advance Mental Health Care
9 Directives Act.

10 Sec. 20. Section 30-3423, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 30-3423 (1) An attorney in fact shall not be guilty of any criminal
13 offense, subject to any civil liability, or in violation of any
14 professional oath or code of ethics or conduct for any action taken in
15 good faith pursuant to a power of attorney for health care or an advance
16 mental health care directive under the Advance Mental Health Care
17 Directives Act.

18 (2) No attending physician or health care provider acting or
19 declining to act in reliance upon the decision made by a person whom the
20 attending physician or health care provider in good faith believes is the
21 attorney in fact for health care shall be subject to criminal
22 prosecution, civil liability, or professional disciplinary action.
23 Nothing in sections 30-3401 to 30-3432, however, shall limit the
24 liability of an attending physician or health care provider for a
25 negligent act or omission in connection with the medical diagnosis,
26 treatment, or care of the principal.

27 Sec. 21. Original sections 30-3402, 30-3405, 30-3406, 30-3408, and
28 30-3423, Reissue Revised Statutes of Nebraska, are repealed.