

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 365

Introduced by Crawford, 45.

Read first time January 16, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to public health and welfare; to amend section
- 2 20-409, Reissue Revised Statutes of Nebraska; to adopt the Health
- 3 Care Directives Registry Act; to harmonize provisions; and to repeal
- 4 the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 8 of this act shall be known and may be
2 cited as the Health Care Directives Registry Act.

3 Sec. 2. For purposes of the Health Care Directives Registry Act:

4 (1) Adult means any individual who is nineteen years of age or older
5 or who is or has been married;

6 (2) Advance health care directive means:

7 (a) A power of attorney for health care;

8 (b) A record signed or authorized by a prospective donor under the
9 Revised Uniform Anatomical Gift Act containing the prospective donor's
10 direction concerning a health care decision for the prospective donor;

11 (c) A declaration;

12 (d) A durable power of attorney; or

13 (e) Any other legally recognized and executed instrument for
14 conveying an adult's health care intentions in this state or another
15 state;

16 (3) Declaration means a record signed by an adult specifying the
17 circumstances under which life-sustaining treatment may be withheld or
18 withdrawn from such adult and includes a writing executed in accordance
19 with the requirements of subsection (1) of section 20-404;

20 (4) Department means the Department of Health and Human Services;

21 (5) Emergency service agency means a law enforcement agency, a fire
22 department, an emergency medical service as defined in section 38-1207, a
23 rescue service, or a dispatcher;

24 (6) Health care provider means a person who is licensed, certified,
25 or otherwise authorized by the law of this state to administer health
26 care in the ordinary course of business or practice of a profession;

27 (7) Person means an individual, corporation, business trust, estate,
28 trust, partnership, limited liability company, association, joint
29 venture, government, governmental subdivision or agency, or other legal
30 or commercial entity;

31 (8) Registrant means an adult who provides his or her advance health

1 care directive and personal information to the registry;

2 (9) Registry means the Health Care Directives Registry created
3 pursuant to section 3 of this act; and

4 (10) State means a state of the United States, the District of
5 Columbia, the Commonwealth of Puerto Rico, or a territory or insular
6 possession subject to the jurisdiction of the United States.

7 Sec. 3. (1) The Health Care Directives Registry is created and
8 shall be administered by the department. An adult who has executed a
9 written advance health care directive may register such document with the
10 registry as provided in section 4 of this act. The registry shall be
11 available electronically upon request as provided in subsection (3) of
12 this section.

13 (2) Beginning January 1, 2020, the department shall establish and
14 maintain access to a secure portion of the department's web site that
15 provides an electronic reproduction of documents submitted to the
16 registry pursuant to section 4 of this act. Such access shall include the
17 ability to view the electronic reproduction of a registry document on the
18 web site and to download, print, or otherwise retrieve a copy of the
19 electronic reproduction.

20 (3)(a) The department shall deny access to the registry unless:

21 (i) The registration number and password are provided as assigned
22 under section 5 of this act; and

23 (ii) Access to the advance health care directive is required
24 pursuant to a lawful order of a court of competent jurisdiction,
25 requested by the registrant or the registrant's legal representative,
26 requested by the Public Guardian, requested by an emergency service
27 agency for the purpose of providing or assisting with the provision of
28 medical care to the registrant, or requested by a health care provider
29 only for the purpose of providing health care to the registrant.

30 (b) A registrant or the legal representative of the registrant may
31 access the registered document of the registrant for any purpose.

1 Sec. 4. (1) The department shall establish a process to permit an
2 adult to register an advance health care directive and submit personal
3 information and documents to the registry either by electronic submission
4 or submission of paper documents. The registrant may submit a paper copy
5 or an electronic reproduction of the advance health care directive.

6 (2) A registrant shall submit to the department his or her name,
7 mailing address, and date and place of birth.

8 Sec. 5. When the department receives the documents and information
9 described in section 4 of this act, the department shall:

10 (1) Assign to the registrant a registration number and password to
11 access the registry;

12 (2) Issue a registration card to the registrant indicating that an
13 advance health care directive has been submitted to the registry. The
14 card shall include, but not be limited to, the registrant's name,
15 registration number, and password to access the registry; and

16 (3) Make or transfer an electronic reproduction of any document
17 submitted pursuant to section 4 of this act and post it to the registry,
18 except that the department shall not release the information submitted
19 pursuant to subsection (2) of section 4 of this act except when necessary
20 to verify the identity of the registrant.

21 Sec. 6. The department shall charge a fee to each registrant in an
22 amount such that, when all fees charged to registrants are aggregated,
23 the aggregated fees do not exceed the actual cost of establishing and
24 maintaining the registry, creating and distributing promotional materials
25 for the registry to make the public aware of the registry, and issuing
26 the registration card as provided in section 5 of this act. On or before
27 [XXX date], the registry shall be fully supported by fees charged
28 pursuant to this subsection.

29 Sec. 7. (1) A health care provider who completes an advance health
30 care directive with a patient or his or her legally recognized health
31 care decisionmaker shall include the document in the patient's official

1 medical record. If the patient or the decisionmaker on the patient's
2 behalf chooses to participate in the registry, the health care provider
3 shall submit a copy of the document to the registry.

4 (2) The department, at the request of the registrant or his or her
5 legal representative, shall transmit the information received regarding
6 the registrant's advance health care directive to the registry of another
7 jurisdiction as identified by the registrant or his or her legal
8 representative.

9 Sec. 8. The department shall establish procedures to advise each
10 registrant of the following:

11 (1) A registrant must notify the registry upon revocation of an
12 advance health care directive, including revocation by execution of a
13 subsequent document which replaces a registered document, for the
14 registry to be updated; and

15 (2) Upon execution of a subsequent document which replaces a
16 registered document, a registrant must submit the replacement document
17 for registration as required in sections 4 and 6 of this act in order for
18 the subsequent document to be on the registry.

19 Sec. 9. Section 20-409, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 20-409 An attending physician or other health care provider who is
22 unwilling to comply with the Rights of the Terminally Ill Act shall take
23 all reasonable steps as promptly as practicable to transfer care of the
24 declarant or a registrant under the Health Care Directives Registry Act
25 to another physician or health care provider who is willing to do so.

26 Sec. 10. Original section 20-409, Reissue Revised Statutes of
27 Nebraska, is repealed.