

ADVANCE DIRECTIVE for HEALTHCARE INFORMATION

GEORGIA ADVANCE DIRECTIVE FOR HEALTHCARE

(Georgia Department of Human Resources, July 2007)

PURPOSE:

In recognizing the right of individuals to (1) control all aspects of his or her personal care and medical treatment, (2) insist upon medical treatment, (3) decline medical treatment, or (4) direct that medical treatment be withdrawn, the General Assembly has in the past, provided statutory forms for both the living will and durable power of attorney for health care. To help reduce confusion, inconsistency, out-of-date terminology, and confusing and inconsistent requirements for execution, and to follow the trend set by other states to combine the concepts of the living will and health care agency into a single legal document, the efforts of a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups produced the development of a consolidated advance directive for health care. This newly created form using understandable and everyday language is meant to encourage more citizens of Georgia to voluntarily execute advance directives for health care to make their wishes more clearly known. The General Assembly takes note that the clear expression of individual decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacted a new Chapter 32 of Title 31. This Chapter sets forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care. (July 07)

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INSTRUCTIONS

The effect of the Georgia Advance Directive for Health Care Act on the Georgia Living Will and Georgia Durable Power of Attorney for Health Care Laws.

On July 1, 2007, a number of changes affecting Georgia's laws on advance directives took effect.

- The Georgia Advance Directive for Health Care Act replaced the Georgia Living Will as the new Chapter 32 of Title 31 of the Official Code of Georgia.
- Chapter 36 of Title 31 of the Official Code of Georgia creating the Durable Power of Attorney for HealthCare was repealed and that chapter reserved, meaning that for now, no law will be found in Chapter 36, but the space and the Chapter number will be reserved for future use.
- The Living Will and Durable Power of Attorney for Health Care will no longer be options as advance directives in Georgia.
- Any validly executed Living Will created between March 28, 1986 and June 30, 2007 will remain valid until it is revoked.
- Any validly executed Durable Power of Attorney for Health Care created before June 30, 2007 will remain valid until it is revoked.

To know if your current Living Will and/or Durable Power of Attorney for Health Care is valid, find a copy of the old code sections to confirm the witnessing requirements or consult an attorney who can compare it with the law in effect prior to July 1, 2007.

If one chooses to complete a Georgia Advance Directive for Health Care, it will replace any other advance directive for health care, durable power of attorney for health care, health care proxy, or living will that currently is in place. One may choose not to complete this form and his/her current Living Will and/or Durable Power of Attorney for Health Care form, if valid now, remains valid.

A Georgia Advance Directive for Health Care is Never Required.

DEFINITIONS

(1) 'Advance directive for health care' means a written document voluntarily executed by a declarant in accordance with the requirements of Code Section 31- 32-5.

(2) 'Attending physician' means the physician who has primary responsibility at the time of reference for the treatment and care of the declarant.

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

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

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

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

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

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

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

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

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

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

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

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

CERTIFICATION OF DECLARANT'S CONDITION

Certification of a terminal condition or state of permanent unconsciousness

Before any action can be taken to withdraw or withhold life sustaining procedures or to withdraw or withhold nourishment or hydration for a declarant in a state of permanent unconsciousness or is in a terminal condition, that condition must be certified in writing. The attending physician and one other physician must personally examine the declarant and certify in writing based upon the declarant's condition found during the course of their examination and in accordance with current accepted medical standards that the declarant does meet the criteria for terminal condition or state of permanent unconsciousness as defined above.

USE OF OTHER FORMS

No limitation on the use of other advance directives forms

Using this form of advance directive for health care is completely optional. Other forms of advance directives for health care that substantially comply with this form may be used in Georgia. This includes using forms from other states.

HOW THE NEW FORM DIFFERS

The difference between this advance directive form and the Living Will and Durable Power of Attorney for Health Care

The Georgia Advance Directive for Health Care is an attempt to combine the best features of the Living Will and Durable Power of Attorney for Health Care into one written document. An effort has also been made to make the execution (signing and witnessing) of this document easier and more convenient. The effect of this new document still does not constitute suicide, physician assisted suicide, homicide or euthanasia. Completing one has no affect on insurance, annuities or anything else contingent on the life or death of the person making the advance directive (hereafter, "the declarant").

THE NEW FORM DESCRIBED

Three parts of the Georgia Advance Directive for Health Care

Part One: allows an agent to be appointed to carry out health care decisions (formerly the Durable Power of Attorney for Health Care)

Part Two: allows choices about withholding or withdrawing life support and accepting or refusing nutrition and/or hydration (formerly the Living Will)

Part Three: allows one to nominate someone to be appointed as Guardian if a court determines that a guardian is necessary.

ADVANCE DIRECTIVE

Requirements for the person making an advance directive for health care

~ Must be of sound mind

~ Must be 18 years of age or older Or An emancipated minor

Executing the advance directive for health care

1) the declarant must sign or expressly direct someone else do it for him/her

2) two witnesses required, who are of sound mind 18 years of age or older • Witnesses do not have to see the declarant sign • Witnesses do not have to see each other sign the advance directive

3) the declarant must see both witnesses sign

4) Restriction on witnesses

- Not the health care agent
- Not knowingly be in line to inherit anything from or benefit from the death of the declarant
- Not directly involved in the health care of the declarant
- Only one of the two witnesses can be an employee, agent or on the medical staff of the health care facility where the declarant is receiving his/her health care

HEALTH CARE AGENT

Restrictions on the health care agent

A physician or health care provider directly involved in the care of the declarant may not serve as health care agent.

Duty of the health care agent to act

- A health care agent has no duty to act, even if named.
- If the health care agent does choose to act, s/he must not make decisions that are different or that contradict the decisions of the declarant.
- All of the health care agent's actions must be consistent with the intentions and desires of the declarant.
- If those intentions and desires are not clear, the health care agent's actions must be in the best interests of the declarant considering all of the benefits, burdens, risks and treatments options.

Authorized responsibilities/duties of the health care agent related to the necessary care of the declarant

1) Consent to, authorize, withdraw consent from, refuse, withhold, any and all types of medical/surgical care, treatment, programs and/or procedures

2) Sign and deliver all instruments (documents)

3) Negotiate and enter into all agreements and contracts binding the declarant

4) Accompany him/her in an ambulance or air ambulance

5) Admit to or discharge the declarant from any health care facility

6) Visit and consult with the declarant as necessary

7) Examine, copy and consent to disclosure of all the declarant's medical records deemed relevant

8) Do all other acts reasonably necessary and carry out duties and responsibilities in person or through those employed by the health care agent; this does not include delegating the authority to make health care decisions

9) Consent to an anatomical gift of the declarant's body, in whole or part, an autopsy and direct the final disposition of declarant's remains, including funeral arrangements, burial, or cremation (Note: the law states that the agent can bind the declarant to pay but does not expressly mention binding the 10 estate of the declarant. It may be a good idea to make all arrangements prior to the death of the declarant.)

REFUSAL TO COMPLY

Prohibited actions by the health care agent

The health care agent may not consent to psychosurgery, sterilization, or involuntary hospitalization or treatment under the Mental Health Code, Title 37.

When the attending physician, health care provider and/or health care facility refuse to honor the advance directive for health care

The law states:

For health care decisions with which health care providers are unwilling to comply, after this decision is communicated with the agent, the agent is responsible for arranging for the declarant's transfer to another health care provider. [O.C.G.A. §31-32-8(2)] This section of the law does not expressly include life-sustaining procedures, nourishment or hydration in "health care decisions."

For a declarant's decision to withhold or withdraw life-sustaining procedures or withhold or withdraw the provision of nourishment or hydration, attending physicians who fail or refuse to comply are responsible for making a good faith attempt to effect the transfer of the declarant to another physician who will comply or must permit the agent, next of kin or legal guardian to obtain another physician who will comply. [O.C.G.A. §31-32-9 (d) (1-2)]

If it is the health care facility that refuses to comply with the declarant's decision to withhold or withdraw life-sustaining procedures or nutrition or hydration, the law does not expressly state whose responsibility it is to ensure the declarant is transferred to another health care facility.

REVOKING A DIRECTIVE

Revoking this advance directive for health care

The Georgia Advance Directive for Health Care may be revoked at any time, regardless of the declarant's mental state or competency. It remains effective even if a Guardian is appointed for the declarant unless a court specifically orders otherwise.

Revocation can occur in any of the following ways:

- By completing a new advance directive for health care
- By burning, tearing up, or otherwise destroying the existing advance directive for health care
- By writing a clear statement expressing the intent to revoke the advance directive for health care
- By orally expressing the intent to revoke the advance directive for health care in the presence of a witness 18 years of age or older who confirms this in writing within 30 days. The revocation is effective when the treating physician documents it in the medical record.
- Marrying after executing an advance directive for health care revokes any agent other than the declarant's spouse
- Divorcing or otherwise dissolving a marriage after the execution of an advance directive for health care revokes the designation of the spouse as the health care agent

COMPLETED FORM

What to do with the completed form

You should give a copy of this completed form to people who might need it, such as your health care agent, your family, and your physician. Keep a copy of this completed

form at home in a place where it can easily be found if it is needed. Review this completed form periodically to make sure it still reflects your preferences. If your preferences change, complete a new advance directive for health care.

DOCUMENT INFORMATION

This information was prepared in July 2007 by the State Legal Services Developer of the Georgia DHR-Division of Aging Services.