

***Judiciary***

***HB 1299***

***Title:*** *An act relating to advance health care directives.*

***Brief Description:*** *Regulating advance health care directives.*

***Sponsors:*** *Representatives Keiser, Ballasiotes, Cody, Kenney, Ruderman, Cairnes, Darneille and Rockefeller.*

***Brief Summary of Bill***

- *Creates a psychiatric advance directive– that could contain a health care power of attorney and health care instructions to physicians and family members.*

***Hearing Date:*** *2/2/01*

***Staff:*** *Trudes Hutcheson (786-7384).*

***Background:***

*Before a physician can administer medical treatment, the patient must give his or her informed consent to the particular medical treatment. When a person is incapacitated or unable to consent to health care, informed consent may still be obtained under certain circumstances.*

***Durable Power of Attorney:***

*Current statutes allow a person (the principal) to create a durable power of attorney that authorizes another person (an agent called the attorney in fact–) to make health care decisions for the principal.*

*Although the attorney in fact can make health care decisions for the principal, the statutes*

*prohibit the attorney in fact from consenting to involuntary commitment of the principal, therapy that induces convulsion, surgery solely for the purpose of psychosurgery, or other psychiatric or mental health procedures that restrict freedom of movement.*

*With certain exceptions, the principal's physician, the physician's employees, and owners, administrators, or employees of the principal's health care facility may not act as the person's attorney in fact.*

*The principal may, using the power of attorney, appoint another person as a guardian in the event a guardianship proceeding is ever commenced.*

***Guardianship:***

*When a person is incapacitated, he or she may have a guardian appointed to care for the incapacitated person and assert the incapacitated person's rights and best interests. The guardian is generally appointed by the court after a hearing.*

*Any person or entity may file a petition for the appointment of a guardian for a person who is incapacitated. A person is incapacitated in a guardianship proceeding if the court finds that the person has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.*

*For the purposes of giving informed consent to health care under the guardianship statutes, a person may be incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity.*

*The limitations applicable to an attorney in fact regarding consent to certain types of mental health treatment also apply to guardians.*

***Health Care Directive:***

*Under the Natural Death Act, a person may prepare a health care directive– to specify that if he or she is dying, artificial means are not to be used to extend his or her life. Health care directives were previously referred to as living wills.–*

*The health care directive may instruct the physician to withhold or withdraw life-sustaining treatment if the person has a terminal condition or is in a permanent unconscious condition. The person must sign the directive in the presence of two witnesses who are not related to the person by blood or marriage and who are not entitled to any portion of the person's estate.*

*In addition, a witness to the directive may not be the attending physician, an employee of the attending physician or a health facility in which the person is a patient, or any person who has a claim against any portion of the person's estate upon the person's death.*

*The directive may be revoked at any time by the person, without regard to the person's mental state or competency by any of these methods:*

- (a) by being canceled, defaced, obliterated, burned, torn, or destroyed by the person or by some other person in the declarer's presence and by his or her direction;*
- (b) by a written revocation expressing the person's intent to revoke, effective only upon communication to the person's physician; or*
- (c) by a verbal expression to the person's attending physician of the person's intent to revoke.*

***Summary of Bill:***

*A new section is added to the chapter on power of attorney.*

*An instrument called a psychiatric advance directive– is created. The psychiatric advance directive must include one or more health care instructions, a health care power of attorney (appointing a health care agent), or both.*

*The health care instructions may direct health care providers, family members, others assisting in health care, and a health care agent.*

*The health care agent appointed in the psychiatric advance directive may make health care decisions when the person, in the judgment of the person's attending physician, lacks decision-making capacity.*

*Health care instructions– means a written statement of the principal's values, preferences, guidelines, or directions regarding health care.*

*Decision-making capacity– is defined as the ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision.*

*Health care– means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a person's physical or mental condition.*

*To be sufficient, a psychiatric advance directive must: (a) be in writing; (b) be dated; (c) state the principal's name; (d) be executed by a principal with capacity to do so and include the principal's signature or the signature of another person authorized by the principal to sign; and (e) contain verification of the principal's signature or the agent's signature, either by a notary public or by witnesses.*

*A health care agent acting under the psychiatric advance directive has the same right as*

*the principal to receive, review, and obtain copies of medical records of the principal, and to consent to disclosure of medical records of the principal unless the principal has otherwise specified in the directive.*

*Restrictions are placed on who may be named as the person's health care agent. The person's health care agent may not also be the physician making the capacity determination. Unless the person is related to the principal by blood, marriage, registered domestic partnership, or adoption, or unless the principal has otherwise specified in the directive, the appointed health care agent may not be a health care provider or employee of a health care provider attending the principal on the date of execution of the psychiatric advance directive or on the date the health care agent must make decisions for the principal.*

*The health care agent may not act as a witness or notary public for the execution of the psychiatric advance directive that includes a health care power of attorney. In addition, at least one witness must not be a health care provider giving direct care to the principal on the date of the execution of the directive. A person notarizing a psychiatric advance directive may be an employee of a health care provider giving direct care to the principal.*

*A principal with the capacity to do so may revoke a psychiatric advance directive in whole or in part at any time much in the same way current law provides for revoking a health care directive.*

*Absent clear and convincing evidence to the contrary, the principal is presumed to have the capacity to execute and revoke a psychiatric advance directive, and the directive is presumed to be properly executed. A health care provider and health care agent may presume that a psychiatric advance directive is legally sufficient absent actual knowledge to the contrary.*

*A health care agent and health care provider acting under the direction of the agent are presumed to be acting in good faith absent clear and convincing evidence.*

***Effective Date:*** *Ninety days after adjournment of session in which bill is passed.*

***Appropriation:*** *None.*

***Fiscal Note:*** *Not Requested.*