

The Health Care Directives and Substitute Health Care Decision Makers Act

being

Chapter H-0.001 of the *Statutes of Saskatchewan, 1997*
(effective September 1, 1997) as amended by the *Statutes of
Saskatchewan, 2000, c.A-5.3; and 2004, c.65.*

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER H-0.001

An Act respecting Health Care Directives and Substitute Health Care Decision Makers and making a consequential amendment to another Act

PART I

Short Title and Interpretation

Short title

1 This Act may be cited as *The Health Care Directives and Substitute Health Care Decision Makers Act*.

Interpretation

2(1) In this Act:

- (a) **“adult”** means a person 18 years of age or more;
- (b) **“capacity”** means the ability:
 - (i) to understand information relevant to a health care decision respecting a proposed treatment;
 - (ii) to appreciate the reasonably foreseeable consequences of making or not making a health care decision respecting a proposed treatment; and
 - (iii) to communicate a health care decision on a proposed treatment;
- (c) **“directive”** means instructions given by a person pursuant to this Act that deal with the person’s health care decisions, with the appointment of a proxy or with both;
- (d) **“health care decision”** means a consent, refusal of consent or withdrawal of consent to treatment;
- (e) **“nearest relative”** means nearest relative as described in section 15;
- (f) **“personal guardian”** means a personal guardian appointed pursuant to *The Adult Guardianship and Co-decision-making Act* who has the authority to make health care decisions for a dependent adult and who acts in accordance with the authority granted to the personal guardian pursuant to that Act;
- (g) **“proxy”** means a person appointed in a directive to make health care decisions for the person making the directive;
- (h) **“treatment”** means anything that is done for a therapeutic, preventive or palliative purpose related to the physical or mental health of a person;
- (i) **“treatment provider”** means a person authorized by law to provide treatment.

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(2) Nothing in this Act authorizes:

- (a) a decision, in a directive, by a proxy appointed in a directive, by a personal guardian or by a nearest relative, that is prohibited by the *Criminal Code*; or
- (b) the use of a directive to consent to active euthanasia or assisted suicide.

1997, c.H-0.001, s.2; 2000, c.A-5.3, s.80.

PART II
Directives

Persons who may make directives

3 Any person 16 years of age or more who has the capacity to make a health care decision may make a directive.

1997, c.H-0.001, s.3.

When directive in effect

4(1) A directive takes effect when the person making the directive does not have the capacity to make a health care decision respecting a proposed treatment.

(2) A directive remains in effect until the person making the directive recovers his or her capacity to make a health care decision respecting a proposed treatment.

1997, c.H-0.001, s.4.

Effect of directive

5(1) Where a health care decision in a directive clearly anticipates and gives directions relating to treatment for the specific circumstances that exist, the health care decision in the directive has the same effect as a health care decision made by a person who has the capacity to make a health care decision respecting a proposed treatment.

(2) Where a health care decision in a directive does not clearly anticipate and give directions relating to treatment for the specific circumstances that exist, the directive is to be used for guidance as to the wishes of the person making the directive.

(3) A health care decision made by a proxy in accordance with section 12 has the same effect as a health care decision made by a person who has the capacity to make a health care decision respecting a proposed treatment.

(4) Where a directive is made by a person who is the subject of a certificate pursuant to section 24 of *The Mental Health Services Act*, a detention order pursuant to section 24.1 of that Act or a community treatment order pursuant to section 24.2 of that Act:

- (a) a health care decision in the directive relating to treatment for a mental disorder is to be used for guidance as to the wishes of the person making the directive;

- (b) subsections (1) and (2) apply with respect to any other health care decisions in the directive;

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(c) a health care decision made by a proxy relating to treatment for a mental disorder is to be used for guidance as to the wishes of the person making the directive; and

(d) subsection (3) applies with respect to any other health care decisions made by a proxy.

1997, c.H-0.001, s.5.

Requirements of a directive

6(1) Subject to subsection (3), a directive is not valid unless it is in writing, and is dated and signed:

(a) by the person making the directive; or

(b) at the direction and in the presence of the person making the directive, by a person other than a proxy appointed in the directive or the proxy's spouse.

(2) Where a directive is signed pursuant to clause (1)(b):

(a) the person making the directive shall acknowledge the signature in the presence of a witness who is not a proxy appointed in the directive or the proxy's spouse; and

(b) the witness shall sign the directive as witness in the presence of the person making the directive.

(3) A person may make a directive by any method prescribed in the regulations.

1997, c.H-0.001, s.6.

Revocation of directive

7(1) A person who made a directive or any other person at the direction and in the presence of a person who made the directive may revoke the directive:

(a) orally;

(b) in writing;

(c) by destroying the directive; or

(d) by making a new directive.

(2) Unless a directive states otherwise, an appointment of a spouse as a proxy is revoked if the marriage is terminated by divorce or is found to be void or declared a nullity by any court in a proceeding to which the person making the directive is a party.

1997, c.H-0.001, s.7.

Directive made outside Saskatchewan

8 A directive made outside Saskatchewan that complies with the requirements of this Act is deemed to be a directive made pursuant to this Act.

1997, c.H-0.001, s.8.

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Directive made before Act in force

9 A directive made before this Act comes into force that complies with the requirements of this Act is deemed to be a directive made pursuant to this Act.

1997, c.H-0.001, s.9.

Form of directive

10 The Lieutenant Governor in Council may, by regulation, prescribe a form for directives, but the use of that form is not mandatory.

1997, c.H-0.001, s.10.

PART III
Proxies, Nearest Relatives and Personal Guardians

Age of proxies

11(1) Subject to subsection (2), a proxy must be an adult and must have the capacity to make health care decisions.

(2) A married person who is not an adult may be appointed as a proxy for his or her spouse, but only if the married person has the capacity to make health care decisions.

1997, c.H-0.001, s.11.

Wishes or best interests to be followed

12 A proxy shall act:

(a) according to the wishes expressed by the person making the directive prior to that person's incapacity to make a health care decision, if the proxy has knowledge of the person's wishes; or

(b) according to what the proxy believes to be in the best interests of the person making the directive, if the proxy has no knowledge of the person's wishes.

1997, c.H-0.001, s.12.

Appointment of more than one proxy

13(1) If two or more proxies are appointed in a directive and the directive does not indicate whether they are to act jointly or successively, they are deemed to be appointed to act successively in the order in which they are named in the directive.

(2) Unless the directive states otherwise, where two or more proxies are appointed to act jointly:

(a) the health care decision of the majority, if there is one, is deemed to be the health care decision of all; and

(b) if one or more of the proxies dies or is unwilling, unavailable or incapable to make a health care decision, the remainder of the proxies may make the health care decision and the health care decision of the majority, if there is one, is deemed to be the health care decision of all.

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(3) Where two or more proxies are appointed to act jointly and the health care decision of the majority cannot be reached, the proxy named first in the directive shall make the health care decision.

1997, c.H-0.001, s.13.

No delegation of authority

14 A proxy cannot delegate his or her authority as proxy.

1997, c.H-0.001, s.14.

Nearest relative

15(1) Subject to subsections (2) and (3), a nearest relative is, with respect to a person requiring treatment mentioned in section 16, the person first described in the following clauses who is willing, available and has the capacity to make a health care decision:

- (a) the spouse or person with whom the person requiring treatment cohabits and has cohabited as a spouse in a relationship of some permanence;
- (b) an adult son or daughter;
- (c) a parent or legal custodian;
- (d) an adult brother or sister;
- (e) a grandparent;
- (f) an adult grandchild;
- (g) an adult uncle or aunt;
- (h) an adult nephew or niece.

(2) For the purposes of subsection (1), the relationships listed in clauses (1)(b) to (h) include adoptive relationships.

(3) For the purposes of subsection (1):

- (a) where a person requiring treatment is not an adult, the health care decision of a legal custodian, within the meaning of *The Children's Law Act*, is preferred to the health care decision of a non-custodial parent;
- (b) where a person requiring treatment is an adult, the health care decision of a person, other than the Minister of Community Resources and Employment, who was the legal custodian of the person requiring treatment immediately before that person became an adult is preferred to the health care decision of a parent;
- (c) except with respect to adoptive relationships, the health care decision of a relative of the whole blood is preferred to the health care decision of a relative of the same description of the half blood; and
- (d) the health care decision of the elder or eldest of two or more relatives listed in each clause of subsection (1) is preferred to the health care decision of the other or others of those relatives.

1997, c.H-0.001, s.15; 2004, c.65, s.10.

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Substitute health care decision-making

16(1) Subject to section 17, where a person requires treatment but lacks the capacity to make a health care decision, the nearest relative may make a health care decision on behalf of the person if the person:

- (a) has not made a health care decision in a directive that clearly anticipates and gives directions relating to treatment for the specific circumstances that exist; and
 - (b) either:
 - (i) has not appointed a proxy in a directive or has not had a personal guardian appointed for him or her; or
 - (ii) has appointed a proxy in a directive or has had a personal guardian appointed for him or her, but the proxy or personal guardian is unwilling, unavailable or incapable to make a health care decision.
- (2) A health care decision made by the nearest relative pursuant to subsection (1) has the same effect as a health care decision made by a person who has the capacity to make a health care decision respecting a proposed treatment.
- (3) The nearest relative shall act:
- (a) according to the wishes expressed by the person requiring treatment prior to that person's incapacity to make a health care decision, if the nearest relative has knowledge of the person's wishes; or
 - (b) according to what the nearest relative believes to be in the best interests of the person requiring treatment, if the nearest relative has no knowledge of the person's wishes.
- (4) Where there is no nearest relative or where a reasonable attempt to find the nearest relative has been made but the nearest relative cannot be found, and a person requiring treatment lacks the capacity to make a health care decision, a treatment provider may provide treatment in a manner and to the extent that is reasonably necessary and in the best interests of the person without receiving a health care decision from the nearest relative if:

- (a) the treatment provider believes that the proposed treatment is needed; and
- (b) another treatment provider agrees in writing that the proposed treatment is needed.

1997, c.H-0.001, s.16.

Substitute health care decision-making for members of religious orders

17(1) This section applies to a person who is a professed member of a religious order prescribed in the regulations.

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(2) Where a person described in subsection (1) requires treatment but lacks the capacity to make a health care decision, the ecclesiastical authority designated by the religious order and prescribed in the regulations may make a health care decision on behalf of the person if the person:

- (a) has not made a health care decision in a directive that clearly anticipates and gives directions relating to treatment for the specific circumstances that exist; and
- (b) either:
 - (i) has not appointed a proxy in a directive or has not had a personal guardian appointed for him or her; or
 - (ii) has appointed a proxy in a directive or has had a personal guardian appointed for him or her, but the proxy or personal guardian is unwilling, unavailable or incapable to make a health care decision.

(3) The provisions in this Act with respect to a nearest relative apply, with any necessary modification, to the ecclesiastical authority making a health care decision on behalf of a person described in subsection (1).

1997, c.H-0.001, s.17.

Admission to health care facility

18 For the purposes of making a health care decision pursuant to this Act, a proxy or a nearest relative, as the case may be, may apply to a treatment provider to admit a person requiring treatment to a health care facility.

1997, c.H-0.001, s.18.

Personal health care information to be disclosed

19 Notwithstanding any other Act or law, personal health care information is to be disclosed by a treatment provider to a proxy, nearest relative or personal guardian where it is necessary to enable that person to make an informed health care decision.

1997, c.H-0.001, s.19.

Court application

20(1) An interested person may apply to the Court of Queen's Bench for an order requesting the relief set out in subsection (2).

(2) Where the Court of Queen's Bench is satisfied that a proxy or nearest relative is not acting in good faith and in accordance with this Act, the court may:

- (a) suspend or terminate the appointment of the proxy or the authority of the nearest relative and rescind any health care decision made by the proxy or nearest relative;
- (b) in the case of a proxy, substitute the court's health care decision for any health care decision made by the proxy, except where the directive appoints at least one other proxy who is willing, available and capable to make a health care decision; and

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- (c) in the case of a nearest relative, appoint another person from the list set out in subsection 15(1) to make a health care decision.
- (3) A health care decision made by the court pursuant to clause (1)(b) is to be made in accordance with section 12.

1997, c.H-0.001, s.20.

Decisions of guardians and proxies

- 21(1)** This section applies where a personal guardian has been appointed on behalf of a person, and the person has also appointed a proxy.
- (2) Where a directive clearly anticipates and gives directions relating to treatment for the specific circumstances that exist, the proxy and personal guardian shall follow a health care decision in the directive.
- (3) Subject to subsection (4), where the directive does not clearly anticipate and give directions relating to treatment for the specific circumstances that exist and a health care decision of the personal guardian is inconsistent with a health care decision of the proxy, the proxy's health care decision is preferred to the personal guardian's health care decision.
- (4) Where a health care decision of a personal guardian is inconsistent with a health care decision of a proxy, either party may apply to the Court of Queen's Bench for direction respecting which health care decision is to be followed.

1997, c.H-0.001, s.21.

**PART IV
General**

Limitations on actions

- 22(1)** No action lies or shall be instituted against a treatment provider acting in good faith and in accordance with this Act who provides or refrains from providing treatment:
 - (a) in accordance with a directive or a health care decision made by a proxy, nearest relative or personal guardian;
 - (b) contrary to a directive, if the treatment provider did not know of the existence of the directive or its contents or believed that the directive had been revoked; or
 - (c) in accordance with subsection 16(4).
- (2) No action lies or shall be instituted against a proxy, nearest relative or personal guardian:
 - (a) who acts in good faith and in accordance with this Act; or
 - (b) who fails to make a health care decision in accordance with a directive.

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(3) No action lies or shall be instituted against a person acting in good faith and in accordance with this Act where that person relies on a directive and is unaware that the directive:

- (a) was not executed in accordance with this Act;
- (b) had been revoked at the time it was relied on; or
- (c) was made by a person under the age of 16 years or a person who did not have the capacity to make health care decisions.

1997, c.H-0.001, s.22.

Entitlement not void

23 Persons who sign directives as witnesses or for the persons making the directives, persons who are appointed as proxies and the spouses of those persons are not disentitled, by reason only of the signing or the appointment, to any of the following:

- (a) a beneficial devise, bequest or other disposition or appointment of or affecting real or personal property pursuant to the will of the person making the directive;
- (b) the proceeds of an insurance policy on the life of the person making the directive;
- (c) a share, pursuant to *The Intestate Succession Act, 1996*, of the estate of the person making the directive.

1997, c.H-0.001, s.23.

Offence

24(1) Any person who, without the consent of the person making a directive, wilfully conceals, cancels, obliterates, damages, alters, falsifies or forges a directive, an amendment to a directive or a revocation of a directive is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000, to imprisonment for a term of not more than three months or to both.

(2) Any person who coerces, requires or places undue influence on another person to make a directive is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000, to imprisonment for a term of not more than three months or to both.

(3) No person convicted pursuant to subsection (1) or (2) is entitled to any of the following:

- (a) a beneficial devise, bequest or other disposition or appointment of or affecting real or personal property pursuant to the will of the person making the directive;
- (b) the proceeds of an insurance policy on the life of the person making the directive;

(c) a share, pursuant to *The Intestate Succession Act, 1996*, of the estate of the person making the directive.

1997, c.H-0.001, s.24.

Regulations

25 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) prescribing a form or forms that may be used in making a directive pursuant to this Act;
- (c) prescribing methods, other than writing, that may be used in making a directive pursuant to this Act;
- (d) prescribing religious orders and ecclesiastical authorities designated by religious orders for the purposes of section 17;
- (e) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (f) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

1997, c.H-0.001, s.25.

PART V
Consequential and Coming into Force

R.S.S. 1978, c.D-17, section 18 repealed

26 Section 18 of *The Department of Health Act* is repealed.

1997, c.H-0.001, s.26.