<table>
<thead>
<tr>
<th>STATE</th>
<th>A. FORM PROVIDED? &amp; START OF AGENCY AUTHORITY</th>
<th>B. AGENT TERMINOLOGY &amp; LIMITS ON AGENT'S POWERS</th>
<th>C. TRIGGERING CRITERIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. ALABAMA</td>
<td>YES Must be substantially followed Effective only upon incapacity 22-8A-4(d)</td>
<td>Terminology: Health care proxy, §22-8A-3(7) Limitations: • Nutrition and hydration* • Alabama Durable Power of Attorney Act, 26-1-2: no psychosurgery, sterilization, abortion when not necessary to preserve the life of the principal, or involuntary mental health hospitalization or treatment • Pregnancy limitation, 22-8A-4(e) * Permissible if expressly authorized</td>
<td>Withdrawing life-support: Attending physician must determine lack of capability over own care, and that withdrawing life-support will not result in undue pain or discomfort. Attending + second qualified opinion must certify that individual has terminal illness, injury, or condition of permanent unconsciousness.</td>
</tr>
<tr>
<td>2. ALASKA</td>
<td>YES Optional Immediately effective permitted, 13.52.010</td>
<td>Terminology: Agent, §13.52.010(b) Limitations: • No abortion, sterilization, psychosurgery, or removal of bodily organs except where the above procedures are necessary to preserve the life of the patient or to prevent serious impairment to the patient’s health • Pregnancy limitation</td>
<td>Determining lack-of-capacity: If not mental health treatment: one physician must determine patient lacks capacity to make a health care decision. If mental health treatment: one physician and at least one psychiatrist, or one physician and a mental health care clinician, must have determined patient lacks capacity. Treatment may only be performed on an emergency basis.</td>
</tr>
<tr>
<td>3. ARIZONA</td>
<td>YES Optional Effective only upon incapacity §36-3223A</td>
<td>Terminology: Agent, §36-3201 Limitations: None specified</td>
<td>Lack of capacity: No medical opinion necessary, beyond “If an adult patient is unable to make or communicate health care treatment decisions[,]” A.R.S. § 36-3231(A)</td>
</tr>
</tbody>
</table>
### 4. Arkansas


Pre-existing "Durable Power of Attorney for Health Care Act" (§20-13-104) and "Rights of the Terminally Ill and Permanently Unconscious Act" (§20-17-201 to -218 remain on the books but are overridden to the extent in conflict with the Healthcare Decisions Act for directives since 2013.

<table>
<thead>
<tr>
<th>NO</th>
<th>Terminology:</th>
<th>Prior to withdrawal of life support:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immediately effective permitted §20-6-103(c)</td>
<td>Agent, 20-6-102(2)</td>
<td>Two physicians needed, supervisor and independent physician, to certify two things:</td>
</tr>
<tr>
<td>Limitations:</td>
<td>None specified</td>
<td>1. Provision of artificial nutrition/hydration is merely prolonging the act of dying</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. The principal is highly unlikely to regain capacity. A.C.A. § 20-6-106(b)(2)</td>
</tr>
</tbody>
</table>

### 5. California


**Combined AD**

**YES** Optional

<table>
<thead>
<tr>
<th>Terminology:</th>
<th>Determining Lack of Capacity:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agent §4607</td>
<td>One physician needed to determine lack of capacity. § 4658</td>
</tr>
<tr>
<td>Limitations:</td>
<td></td>
</tr>
<tr>
<td>Civil commitment</td>
<td></td>
</tr>
<tr>
<td>Electro-convulsive therapy</td>
<td></td>
</tr>
<tr>
<td>Psycho-surgery</td>
<td></td>
</tr>
<tr>
<td>Sterilization</td>
<td></td>
</tr>
<tr>
<td>Abortion</td>
<td></td>
</tr>
</tbody>
</table>

### 6. Colorado


**Special DPA for Health Care**

**Separate Living Will Statue:**


<table>
<thead>
<tr>
<th>NO</th>
<th>Terminology:</th>
<th>Removal of life support:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immediately effective permitted §15-14-501</td>
<td>Agent § 15-14-504 (1)(c)</td>
<td>When agent has medical power of attorney: absent directive set forth in medical durable power of attorney, the agent shall act in accordance with the best interests of the principal as determined by the agent.</td>
</tr>
<tr>
<td>Limitations:</td>
<td>None specified</td>
<td>When agent is a surrogate: withdrawal from a patient only when the attending physician and a second independent physician trained in neurology or neurosurgery provision is merely prolonging the act of dying and is unlikely to result in the restoration of the patient to independent neurological functioning. C.R.S.A. § 15-18.5-103(6)(a)</td>
</tr>
</tbody>
</table>
### 7. CONNECTICUT

**CONN. GEN. STAT. § 19a-570 to -580g (West, 2016)**

**Terminology:**
- Health care representative (19a-570)
- Person designated (§1-56r)

**Limitations:**
- Sections 19a-571 to 19a-573, inclusive, 19a-575 and 19a-575a are not applicable to pregnant patients

---

### 8. DELAWARE

**DEL. CODE ANN. tit. 16, § 2501 - 2518 (West, 2016)**

**Terminology:** Agent §2501 (b)

**Limitations:**
- Pregnancy limitation
- Decisions about life-sustaining treatment require a finding of permanent unconsciousness, terminal condition, or serious illness or frailty, §2503

---

### 9. DISTRICT OF COLUMBIA

**D.C. CODE § 21-2201 - 2213 (West, 2016)**

**Terminology:** Attorney in Fact §21-2202 (1)

**Limitations:**
- Abortion*
- Sterilization*
- Psycho-surgery*
- Convulsive therapy or other behavior modification programs*

*Unless authorized by court

---
## 10. FLORIDA

**FLA. STAT. ANN. § 765.101 -.404 (West, 2016)**

Separate acts and forms ("Health Care Surrogate Act and "Life-Prolonging Procedure Act") are under an umbrella "Health Care Advance Directives" chapter.

<table>
<thead>
<tr>
<th>YES</th>
<th>Optional</th>
<th>Terminology: Surrogate § 765.101 (16)</th>
<th>Determining capacity: Only one doctor needed to certify capacity; two in cases of uncertainty. (F.S.A. § 765.204).</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Limitations:</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Mental health facility admission*</td>
<td></td>
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<tr>
<td></td>
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<td>• Electro-convulsive therapy*</td>
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<td></td>
<td>• Psycho-surgery*</td>
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<tr>
<td></td>
<td></td>
<td>• Sterilization*</td>
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<td></td>
<td></td>
<td>• Abortion*</td>
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<tr>
<td></td>
<td></td>
<td>• Experimental treatments not approved by IRB*</td>
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<td>• Withdrawing or withholding life-prolonging procedures from a pregnant patient prior to viability*</td>
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<td></td>
<td>• Pregnancy limitation*</td>
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<td></td>
<td></td>
<td>* Consent/refusal permissible if expressly authorized</td>
<td></td>
</tr>
</tbody>
</table>

**Terminology:** Surrogate § 765.101 (16)

### Limitations:
- Mental health facility admission*
- Electro-convulsive therapy*
- Psycho-surgery*
- Sterilization*
- Abortion*
- Experimental treatments not approved by IRB*
- Withdrawing or withholding life-prolonging procedures from a pregnant patient prior to viability*
- Pregnancy limitation*
- Consent/refusal permissible if expressly authorized

### Abbreviations:
- AD = Advance Directive
- LW = Living Will
- DPA = Durable Power of Attorney
- UHCDA = Uniform Health Care Decisions Act

### Terminology: Surrogate § 765.101 (16)

### Limitations:
- Mental health facility admission*
- Electro-convulsive therapy*
- Psycho-surgery*
- Sterilization*
- Abortion*
- Experimental treatments not approved by IRB*
- Withdrawing or withholding life-prolonging procedures from a pregnant patient prior to viability*
- Pregnancy limitation*
- Consent/refusal permissible if expressly authorized

## 11. GEORGIA

**GA. CODE ANN. § 31-32-1 to -14 (West, 2016) ("Advance Directive for Health Care Act")**

### Combined AD

| YES | Optional | Terminology: Health Care Agent §31-32-2 (6) | Prior to withdrawal of life-support:  
Physician shall determine declarant is not pregnant, or if she is that fetus is not viable and specific instructions in advance directive.  
To establish a terminal condition or state of permanent unconsciousness:  
Two physicians (one attending physician) certify after personally examining patient.  
A designated surrogate may make all health-care decision for the patient that she/he would make on their own behalf.  
An appointed surrogate may do the same, but when choosing to withhold or withdraw artificial n/h, the primary physician and a second independent physician must certify that the provision or continuation of artificial n/h is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future. HRS § 327E-5 |
<table>
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<tbody>
<tr>
<td></td>
<td></td>
<td>Limitations:</td>
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<tr>
<td></td>
<td></td>
<td>• Psycho-surgery</td>
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<td></td>
<td></td>
<td>• Sterilization</td>
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<td></td>
<td>• Involuntary hospitalization or treatment</td>
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<td>• Pregnancy limitation</td>
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<tr>
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<td></td>
<td>• Authority to delegate</td>
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</tr>
</tbody>
</table>

### Terminology: Health Care Agent §31-32-2 (6)

### Limitations:
- Psycho-surgery
- Sterilization
- Involuntary hospitalization or treatment
- Pregnancy limitation
- Authority to delegate

### Abbreviations:
- AD = Advance Directive
- LW = Living Will
- DPA = Durable Power of Attorney
- UHCDA = Uniform Health Care Decisions Act

### Terminology: Health Care Agent §31-32-2 (6)

### Limitations:
- Psycho-surgery
- Sterilization
- Involuntary hospitalization or treatment
- Pregnancy limitation
- Authority to delegate

### Prior to withdrawal of life-support:
- Physician shall determine declarant is not pregnant, or if she is that fetus is not viable and specific instructions in advance directive.
- To establish a terminal condition or state of permanent unconsciousness:
- Two physicians (one attending physician) certify after personally examining patient.
- A designated surrogate may make all health-care decision for the patient that she/he would make on their own behalf.
- An appointed surrogate may do the same, but when choosing to withhold or withdraw artificial n/h, the primary physician and a second independent physician must certify that the provision or continuation of artificial n/h is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future. HRS § 327E-5

## 12. HAWAII

**HAW. REV. STAT. § 327E-1 to – 16 (West, 2016) ("Uniform Health-Care Decisions Act")**

### Combined AD

| YES | Optional | Terminology: Agent §327E-2 | A designated surrogate may make all health-care decision for the patient that she/he would make on their own behalf.  
An appointed surrogate may do the same, but when choosing to withhold or withdraw artificial n/h, the primary physician and a second independent physician must certify that the provision or continuation of artificial n/h is merely prolonging the act of dying and the patient is highly unlikely to have any neurological response in the future. HRS § 327E-5 |
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<thead>
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<tbody>
<tr>
<td></td>
<td></td>
<td>Limitations:</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>• Mental Health Facility Admission*</td>
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</tr>
</tbody>
</table>

### Terminology: Agent §327E-2

### Limitations:
- Mental Health Facility Admission*
### STATE HEALTH CARE STATUTES
#### Triggering Authority of Surrogate
#### June 2018

**Explanation:** The descriptors in the chart are generalizations of statutory language and not quotations, so the statutes must be consulted for precise meaning.

**Abbreviations:** AD = Advance Directive  
LW = Living Will  
DPA = Durable Power of Attorney  
UHCDA = Uniform Health Care Decisions Act

| 13. IDAHO | | | | |
|---|---|---|---|
| **IDAHO CODE ANN. § 39-4501 to -4515 (West, 2016)**  

("Medical Consent and Natural Death Act") | Yes | Terminology: Surrogate Decision Maker § 39-4502 (16) | No particular medical certification needed prior to withdrawal of artificial n/h. Certification of persistent vegetative state for purposes of advance healthcare directive requires a diagnosis by a neurological specialist. I.C. § 39-4502 |
| | Optional | Limitations:  
- Pregnancy limitation (included in statutory form) | |
| | Immediately effective permitted §39-4512 | | |
| | Combined AD | | |

| 14. ILLINOIS | | | | |
|---|---|---|---|
| **755 ILL. COMP. STAT. ANN. 45/4-1 to /4-12 (West, 2016)**  

("Powers of Attorney for Health Care Law") | Yes | Terminology: Agent § 45/4-4 (c) | Two doc rule for qualifying conditions (terminal condition, permanent unconsciousness, or incurable or irreversible condition). |
| | Optional | Limitations: None specified | |
| | Immediately effective permitted. §4-10(b), in statutory form | | |
| | Special DPA | | |
| | Separate LW Statute: 755 ILL. COMP. STAT. ANN 35/1 to /10  

("Living Will Act") | | | |

| 15. INDIANA | | | | |
|---|---|---|---|
| **IND. CODE ANN. § 30-5-1-1 to 30-5-5-19 (West, 2016)**  

specifically § 30-5-5-16 and -17,  
(part of general “Power of Attorney” article of code) | No | Terminology: Attorney in Fact under §30-5-2-2 | Establishing capacity:  
One physician needed. IC 30-5-7-3. |
| | | Limitations:  
- Agent’s authority to delegate*  
- * Permissible if expressly authorized | |
| | Immediately effective permitted, 30-5-4-2 | | |
| | IND. CODE ANN. § 16-36-1-1 to -14 (West, 2016),  

d("Health Care Consent “ chapter creating a health care representative)  

Separate LW Statute: IND. CODE ANN. § 16-36-4-1 to -21.  

d("Living Wills and Life Prolonging Procedures” chapter) | No | Health Care Representative §16-36-1-2 | |
| | Effective only upon incapacity 16-36-1-7(e) | Limitations: None specified | |
## STATE HEALTH CARE STATUTES
### Triggering Authority of Surrogate
### June 2018

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<table>
<thead>
<tr>
<th>State</th>
<th>Statute</th>
<th>Special DPA</th>
<th>Separate LW Statute</th>
<th>Terminology</th>
<th>Limitations</th>
<th>Exceptional Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>16. IOWA</strong></td>
<td>IOWA CODE ANN. § 144B.1 to .12 (West, 2016) (“Durable Power of Attorney for Health Care” chapter)</td>
<td>YES</td>
<td>Optional</td>
<td>Attorney in Fact § 144B.1 (1)</td>
<td>None specified</td>
<td>Determination of terminal condition requires two doctors, I.C.A. § 144A.5, to assess whether the patient has an incurable or irreversible condition that, without the administration of life-sustaining procedures, will cause the patient to die within a relatively short period of time or a state of permanent unconsciousness from which there can be no recovery.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Effective only upon incapacity §144B.1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Special DPA</td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Separate LW Statute: IOWA CODE ANN. § 144A.1 - .12 (“Life-sustaining Procedures Act”)</td>
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<td></td>
</tr>
<tr>
<td><strong>17. KANSAS</strong></td>
<td>KAN. STAT. ANN. § 58-625 to -632 (West, 2016) (“Uniform Durable Power of Attorney Act”).</td>
<td>YES</td>
<td>Must be substantially followed</td>
<td>Attorney in Fact § 58-651 (a)</td>
<td>Cannot revoke previous living will</td>
<td>Qualified patients may prepare declarations for life-sustaining procedures, and qualification of patients requires a diagnosis of a terminal condition by two physicians. K.S.A. 65-28,102</td>
</tr>
<tr>
<td></td>
<td>Special DPA</td>
<td></td>
<td>Immediately effective permitted §58-629(b)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>18. KENTUCKY</strong></td>
<td>KY. REV. STAT. ANN. § 311.621 to .643 (West, 2016) (“Kentucky Living Will Directive Act”)</td>
<td>YES</td>
<td>Must be substantially followed</td>
<td>Surrogate §311.621(16)</td>
<td>Pregnancy Limitation, §311.629(4)</td>
<td>Removal of artificially-provided nutrition and hydration unavailable to pregnant women w/viable fetuses. KRS § 311.629(3). Permanently unconsciousness and terminal condition must be determined by two physicians. § 311.621</td>
</tr>
<tr>
<td></td>
<td>Combined AD (but called “Living Will Directive”)</td>
<td></td>
<td>Effective only upon incapacity (in statutory form) §311.625</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### 19. LOUISIANA

**LA. CIV. CODE ANN. art. 2989 to 3034 (West, 2016)** specifically art. 2997 providing for health decisions power.

- **General DPA statute (called a “mandate”),**
- **Separate Living Will Statute:**
- **LA. REV. STAT. ANN § 40:1151 - 1155 (West, 2016)**

<table>
<thead>
<tr>
<th><strong>NO</strong></th>
<th><strong>Terminology:</strong> Mandatory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Immediately effective permitted Art. 3026.</td>
<td>Qualified patient (one with terminal and irreversible condition) shall have attending and second physician certify.</td>
</tr>
</tbody>
</table>

### 20. MAINE

**ME. REV. STAT. ANN. tit. 18-A, § 5-801 to -817 (West, 2016)** ("Uniform Health-Care Decisions Act")

- **Combined AD**

<table>
<thead>
<tr>
<th><strong>YES</strong></th>
<th><strong>Terminology:</strong> Agent § 5-801 (b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optional</td>
<td>Limitations:  • Mental health facility admission, consent permissible if expressly authorized</td>
</tr>
<tr>
<td>Immediately effective permitted §§5-802</td>
<td>One physician needed to certify qualifying condition (persistent vegetative state or terminal illness).</td>
</tr>
</tbody>
</table>

### 21. MARYLAND

**MD. CODE ANN., HEALTH-GEN. §§5-601 to -626 (West, 2016)** ("Health Care Decisions Act")

- **Combined AD**

<table>
<thead>
<tr>
<th><strong>YES</strong></th>
<th><strong>Terminology:</strong> Agent § 5-601 (c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Optional</td>
<td>Limitations: None specified</td>
</tr>
<tr>
<td>Immediately effective permitted §§5-602</td>
<td>Suspension of life sustaining treatment requires certification by 2 doctors. MD Code, Health - General, § 5-606</td>
</tr>
</tbody>
</table>

### 22. MASSACHUSETTS

**MASS. GEN. LAWS ANN. ch. 201D, §§ 1 - 17 (West, 2016)** ("Health Care Proxies” chapter)

- **Special DPA**

<table>
<thead>
<tr>
<th><strong>NO</strong></th>
<th><strong>Terminology:</strong> Health Care Agent, or Agent § 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>But § 201D § 4 prescribes required elements of the proxy</td>
<td>Limitations: None specified</td>
</tr>
<tr>
<td>Effective only upon incapacity §201D § 4</td>
<td>One doctor needed to certify incapacity. If certifying incapacity for mental health reasons: attending physician must consult w/ expert in relevant mental illness/developmental disorder. M.G.L.A. 201D § 6</td>
</tr>
</tbody>
</table>
### STATE HEALTH CARE STATUTES

**Triggering Authority of Surrogate**  
June 2018

**Explanation:** The descriptors in the chart are generalizations of statutory language and not quotations, so the statutes must be consulted for precise meaning.

**Abbreviations:**  
AD = Advance Directive  
LW = Living Will  
DPA = Durable Power of Attorney  
UHCDA = Uniform Health Care Decisions Act.

<table>
<thead>
<tr>
<th>State</th>
<th>Code Authority</th>
<th>Acceptance &amp; Effective Requirement</th>
<th>Terminology &amp; Limitations</th>
<th>Certification Requirement</th>
</tr>
</thead>
</table>
| **23. MICHIGAN** | MICH. COMP. LAWS ANN. §700.5506 to .5520 (West, 2016) (“Durable Power of Attorney and Designation of Patient Advocate”) | Only for agent's acceptance  
Effective only upon incapacity §700.5508 | Terminology: Patient Advocate § 5506  
Limitations:  
- Pregnancy limitation  
- Life-sustaining procedures*  
- Mental health facility admission or forced medication, consent permissible if expressly authorized  
- Agent’s authority to delegate*  
  * Permissible if expressly authorized and acknowledges that such a decision could or would allow the patient’s death | Two doctor rule to certify incapacity. M.C.L.A. 700.5508 |
| **24. MINNESOTA** | MINN. STAT. ANN. § 145C.01 to .16 (West, 2016) (“Health Care Directives” chapter) | YES  
Optional  
Immediately effective permitted §145C.05 | Terminology: Health Care Agent §145C.01 (2). Proxy §145B.03 (1)  
Limitations:  
- Pregnancy Limitations*  
  *Unless expressly overridden in directive | Only attending physician need certify lack of decision making capacity. M.S.A. § 145C.06 |
| **25. MISSISSIPPI** | MISS. CODE ANN. § 41-41-201 to -229 (West, 2016 (“Uniform Health-Care Decisions Act”) | YES  
Optional  
Immediately effective permitted 41-41-205(5) | Terminology: Agent §41-41-203 (c)  
Limitations:  
- Mental health facility admission, consent permissible if expressly authorized | One doctor necessary to certify capacity. |
| 26. MISSOURI | NO | Terminology: Attorney in Fact § 404.815  
Limitations:  
- Nutrition & hydration*  
- Agent’s authority to delegate**  
* Refusal permissible if expressly authorized  
** Permissible if expressly authorized  
No rule; one doc needed to certify incapacity. |
|---|---|---|
Special DPA |
|  | Immediately effective permitted §404.825 |
| Separate LW Statute:  

| 27. MONTANA | YES, in Living Will statute only. Optional | Terminology: Attorney in Fact or Agent § 72-5-501  
Limitations:  
- Pregnancy limitation  
One doctor. Patients for whom English is a second language must be assessed by a health care provider in the presence of an interpreter who is fluent in the patient's primary language. Patients who communicate using American sign language must be assessed in the presence of an interpreter fluent in American sign language. MCA 50-5-1302 |
|---|---|---|
| Montana Code Ann. § 72-5-501 and –502 (West, 2016) (Health care provisions in general DPA statute)  
Separate LW Statute:  
|  | Immediately effective permitted §72-5-501 |

| 28. NEBRASKA | YES Optional | Terminology: Attorney in Fact § 30-3402 (3)  
Limitations:  
- Life-sustaining procedures*  
- Nutrition & hydration* (both the usual and typical provision of and those artificially administered)  
- Pregnancy limitation  
* Refusal permissible if expressly authorized  
Only attending physician or APRN needed. MCA 50-9-106 |
|---|---|---|
| Nebraska Rev. Stat. §30-3401 to -3432 (West, 2016) ("Health Care Power of Attorney" article)  
Special DPA  
Separate LW Statute:  
|  | Effective only upon incapacity §30-3411. |
### STATE HEALTH CARE STATUTES
Triggering Authority of Surrogate
June 2018

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**Abbreviations:**
- AD = Advance Directive
- LW = Living Will
- DPA = Durable Power of Attorney
- UHCDA = Uniform Health Care Decisions Act

| 29. NEVADA | YES Optional | Terminology: Agent § 162A.790 (1) | Limits:
Mental health facility admission
Electro-convulsive therapy
Aversive intervention
Psycho-surgery
Sterilization
Abortion
Experimental research/treatment
| Only one doctor needed to certify incapacity. No additional doctor needed for withdrawal of life support. N.R.S. 449.617. |
|-----------------|-----------------|-----------------|-----------------|
| **NEV. REV. STAT. ANN. § 162A.700 to .860 (West, 2016)** | | | |
| | | | |
| (“Durable Power of Attorney for Health Care Decisions” Special DPA, part of general DPA law Separate LW Statute: NEV. REV. STAT. ANN. § 449.535 to .690 (West, 2016) with proxy designation. (“Uniform Act on Rights of the Terminally Ill”) | | | |
| | | | |
| | | | |
| | | | |
| **30. NEW HAMPSHIRE** | YES Form and disclosure statement must be substantially followed. | Terminology: Agent § 137 – J:2 (III) | Limits:
Voluntary admission to any state institution
Sterilization
Pregnancy limitation
Psychosurgery
Electro-convulsive shock therapy
Sterilization
Experimental treatment
Nutrition & hydration*
Life-sustaining treatment*
* Refusal permissible if expressly authorized
| Absent a living will, two physicians or one physician and one APRN must certify the principal is near death or permanently unconscious. N.H. Rev. Stat. § 137-J:10. |
|-----------------|-----------------|-----------------|-----------------|
| **N.H. REV. STAT. ANN. § 137-J:1 to -J:16 (West, 2016)** | | | |
| (“Written Directives for Medical Decision Making for Adults Without Capacity to Make Health Care Decisions” chapter) | | | |
| | | | |
| | | | |
| **31. NEW JERSEY** | NO Effective only upon incapacity §26:2H-59 | Terminology: Health Care Representative § 26:2H-55 | Limits: None specified
<p>| Two physicians must confirm lack of decision making capacity, unless condition is ‘readily apparent’, and health care representative + attending physician agree a second physician’s opinion is unnecessary. Withdrawal of life-sustaining treatment in cases of a terminal condition or permanent unconsciousness requires two physicians to certify. N.J.S.A. 26:2H-60 |
|-----------------|-----------------|-----------------|-----------------|
| <strong>N.J. STAT. ANN. § 26:2H-53 to – 91.2 (West, 2016)</strong> | | | |
| (“Advance Directives for Health Care Act”) | | | |
| | | | |
| | | | |
| | | | |</p>
<table>
<thead>
<tr>
<th>32. NEW MEXICO</th>
<th>YES</th>
<th>Optional</th>
<th>Terminology: Agent § 24-7A-1 (B)</th>
<th>Determining capacity: Two physicians, at least one primary care practitioner, and in case of mental impairment one trained in assessment of functional impairment. § 24-7A-11.</th>
</tr>
</thead>
<tbody>
<tr>
<td>N.M. STAT. ANN. § 24-7A-1 to – 18 (West, 2016) (“Uniform Health-Care Decisions Act”)</td>
<td>Combined AD</td>
<td>Immediately effective permitted §24-7A-2</td>
<td>Limitations: • Mental health facility admission unless expressly authorized</td>
<td></td>
</tr>
<tr>
<td>Special DPA</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>33. NEW YORK</th>
<th>YES</th>
<th>Optional</th>
<th>Terminology: Health Care Agent, or Agent § 2980 (5)</th>
<th>Second opinion needed to determine incapacity. § 2994-c.</th>
</tr>
</thead>
</table>
| N.Y. PUB. HEALTH LAW §§ 2980-2994 (West, 2016) (“Health Care Agents and Proxies” article) | Special DPA | Effective only upon incapacity §2981(4) | Limitations: • Nutrition & hydration*  
* Principal must make his/her wishes "reasonably known" |

<table>
<thead>
<tr>
<th>34. NORTH CAROLINA</th>
<th>YES</th>
<th>Optional</th>
<th>Terminology: Health Care Agent, or Health Care Attorney in Fact § 32A-15 (2)</th>
<th>Single physician determines to a high degree of medical certainty that a person lacks capacity to make or communicate health care decisions and the person will never regain that capacity. N.C.G.S.A. § 90-322; see also N.C.G.S.A. § 90-321.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Separate LW Statute: N.C. GEN. STAT. ANN. § 90-320 to –323 (West, 2016) (“Right to Natural Death; Brain Death” article)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Explanation: The descriptors in the chart are generalizations of statutory language and not quotations, so the statutes must be consulted for precise meaning.

Abbreviations: AD = Advance Directive  
LW = Living Will  
DPA = Durable Power of Attorney  
UHCDA = Uniform Health Care Decisions Act.
### 35. NORTH DAKOTA

**N.D. CENT. CODE ANN. § 23-06.5-01 to -19 (West, 2016)**

"Health Care Directives"

<table>
<thead>
<tr>
<th>Combined AD</th>
<th>YES</th>
<th>Optional</th>
<th>Effective only upon incapacity §23-06.5-03</th>
</tr>
</thead>
<tbody>
<tr>
<td>Terminology: Agent §23-06.5-02 (1)</td>
<td>Limitations:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Mental health facility admission &gt; 45 days*</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Psycho-surgery*</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Abortion*</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Sterilization*</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>*Unless approved by court order</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Pregnancy Limitation**</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Nutrition &amp; Hydration</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>**Unless provided for in AD</td>
<td></td>
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</tr>
</tbody>
</table>

Single doctor to certify lack of capacity for health care directive. § 23-06.5-03. Single doctor needed to certify lack of capacity for surrogacy. § 23-12-13.

### 36. OHIO

**OHIO REV. CODE ANN. § 1337.11 to .17 (West, 2016)**

"Durable Power of Attorney for Health Care" chapter

**Separate LW Statute:**

**OHIO REV. CODE ANN. § 2133.01 to .26 (West, 2016)**

"Modified Uniform Rights of the Terminally Ill Act"

<table>
<thead>
<tr>
<th>Special DPA</th>
<th>NO</th>
<th>But does include mandatory disclosure statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Terminology: Attorney in Fact §1337.12 (A)(2)</td>
<td>Limitations:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Life-sustaining procedures*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Nutrition &amp; hydration*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Pregnancy limitation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Comfort care</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Withdraw health care to which principal previously consented*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>* Refusal permissible if specified conditions are met, including initialing and conspicuous type. §1337.13(E)</td>
<td></td>
</tr>
</tbody>
</table>

Two physicians needed to certify withholding or withdrawal of life-sustaining treatment, and artificial nutrition/hydration. See statutes for additional diagnostic criteria. See R.C. § 2133.09; R.C. § 2133.08.

### 37. OKLAHOMA

**OKLA. STAT. ANN. tit. 63, § 3101.1 - 3102.3 (West, 2016)**

"Oklahoma Advance Directive Act"

<table>
<thead>
<tr>
<th>Combined AD</th>
<th>NO</th>
<th>But if statutory form not used, see Limits on Agents Powers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Terminology: Health Care Proxy § 3101.3 (6)</td>
<td>Limitations:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Pregnancy limitation*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Nutrition &amp; hydration**</td>
<td></td>
</tr>
<tr>
<td></td>
<td>* Refusal permissible if expressly authorized during the course of pregnancy</td>
<td></td>
</tr>
<tr>
<td></td>
<td>** Refusal permissible if expressly authorized in principal’s own words or by a separate section that deals only with nutrition/hydration and is separately marked by declarant</td>
<td></td>
</tr>
</tbody>
</table>

Determining Capacity:

Persistent unconsciousness, terminal condition, and qualified patient require a diagnosis from two physicians. § 3101.3
### STATE HEALTH CARE STATUTES

**Triggering Authority of Surrogate**  
**June 2018**

**Explanation:** The descriptors in the chart are generalizations of statutory language and not quotations, so the statutes must be consulted for precise meaning.

**Abbreviations:** AD = Advance Directive   LW = Living Will   DPA = Durable Power of Attorney   UHCDA = Uniform Health Care Decisions Act.

| 38. OREGON | OR. REV. STAT. ANN. § 127.505 - .660 and § 127.995 (West, 2016) ("Oregon Health Care Decisions Act") | YES | Must be followed But any other form “constitutes evidence of the patient’s desires and interests” Effective only upon incapacity 127.510 | Terminology: Attorney in Fact § 127.505 (6)  
Limitations:  
- Electro-convulsive therapy  
- Psycho-surgery  
- Sterilization  
- Abortion  
- Life-sustaining procedures*  
- Nutrition & hydration*  
* Refusal permissible if expressly authorized or if specified conditions are met (ex: principal has been medically confirmed to be in a terminal condition or permanently unconscious) | Determining capacity:  
Two doc rule for qualifying medical diagnosis. “Permanently unconscious” requires a neurological specialist. § 127.505 Other circumstances may except presumption of consent to artificial nutrition/hydration. § 127.580 |
|---|---|---|---|---|---|
Limitations:  
- Pregnancy limitation*  
- Nutrition & Hydration*  
*Unless expressly authorized in HCPA | One physician necessary to certify qualifying condition. 20 Pa.C.S.A. § 5443 |
| 40. RHODE ISLAND | R.I. GEN. LAWS ANN. § 23-4.10-1 to -12 (West, 2016) (Health Care Power of Attorney “chapter)  
Special DPA  
Separate LW Statute:  
R.I. GEN LAWS ANN. § 23-4.11-1 to –15 (West, 2016) ("Rights of the Terminally Ill Act") | YES | Optional | Terminology:  
- Agent, or Attorney in Fact § 23 - 4.10 - 2  
- Health Care Decision Maker § 23 - 4.11 - 2 (7)  
Limitations:  
- Pregnancy limitation | No rule on medical diagnosis prior to termination of life-sustaining care or artificial feeding. § 23-4.10-5 |
### 41. SOUTH CAROLINA


- **Special DPA for HC within a power of attorney act.**
- **Separate LW Statute** (also provides for appointment of an agent):
  
  S. C. CODE ANN. § 44-77-10 to –160 (West, 2016) ("Death with Dignity Act")

- **YES**
  - Optional §62–5–517
  - Terminology: Agent or attorney –in-Fact §59-7-2.5
  - Limitations (applicable to statutory form only):
    - Nutrition & hydration*
    - Pregnancy limitation
  - * Refusal permissible if expressly authorized

- **Effectiveness of healthcare power of attorney comes into play after certification by two physicians. § 62-5-502 and § 44-66-20**

### 42. SOUTH DAKOTA

S.D. CODIFIED LAWS § 59-1-1 to §59-7-11 (West, 2016) ("Agency" title)

- **General DPA that permits health decisions authority per §59-7-2.1 to §59-7-11. See especially §59-7-2.1 and 2.5**
- **Separate LW Statute:** S.D. CODIFIED LAWS § 34-12D-1 to –22 (West, 2016) ("Living Wills" chapter)

- **NO**
  - Terminology: Agent or Attorney-in-Fact, or §59-7-2.5
  - Limitations:
    - Pregnancy limitation §59-7-2.8
    - Nutrition & hydration*
    - Agent’s authority to delegate**
  - * Refusal permissible if expressly authorized or other conditions are met §59-7-2.7
  - ** Permissible if expressly authorized

- **Single doctor needed to certify incapacity. SDCL § 34-12C-2.**

### 43. TENNESSEE

TENN. CODE ANN. § 68-11-1801 to –1815 (West, 2016) ("Tennessee Health Care Decisions Act")

- **NO**
  - Terminology: Agent §68-11-1802 (a)(2)
  - Limitations: None specified

- **Second independent physician’s certification required when default surrogate wishes to withhold artificial nutrition/hydration. § 68-11-1806.**
### STATE HEALTH CARE STATUTES

**Triggering Authority of Surrogate**

**June 2018**

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LW = Living Will  
DPA = Durable Power of Attorney  
UHCDMA = Uniform Health Care Decisions Act.

<table>
<thead>
<tr>
<th>State</th>
<th>Code and Section</th>
<th>AD = Advance Directive</th>
<th>LW = Living Will</th>
<th>DPA = Durable Power of Attorney</th>
<th>UHCDMA = Uniform Health Care Decisions Act</th>
</tr>
</thead>
</table>
| 44. Texas | TEX. HEALTH & SAFETY CODE ANN. § 166.001 to -.166 (West, 2016) ("Advance Directives Act") | YES, Must be substantially followed plus mandatory disclosure statement. Effective only on incapacity §166.152 | Terminology: Agent § 166.002 (11)  
Limitations:  
- Pregnancy limitation  
- Mental health facility admission  
- Electro-convulsive therapy  
- Psycho-surgery  
- Abortion  
- Comfort care | Both terminal condition and incompetence only require single doc to certify. No further necessary certification. § 166.039.
| 45. Utah  | UTAH CODE ANN. § 75-2A-101 to -125 (West, 2016) ("Advance Health Care Directive Act") | YES Optional | Terminology: Agent or surrogate § 75-2a-103  
Limitations:  
- Pregnancy limitation  
- Long-term custodial placement in licensed facility other than for assessment, rehabilitative, or respite care over principal’s objection §75-2A-110 | One doctor’s opinion needed to certify health care decision making capacity.
| 46. Vermont | VT. STAT. ANN. tit. 18, §§ 9700 - 9720 (West, 2016) ("Advance Directives for Health Care and Disposition of Remains" chapter) | NO | Terminology: Agent § 9702 (2)  
Limitations:  
- Sterilization §9711(f) | One doctor needed to assess capacity.

The ABA acknowledges and thanks the West Group for providing access to on-line legal research.
### STATE HEALTH CARE STATUTES
#### Triggering Authority of Surrogate
**June 2018**

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DPA = Durable Power of Attorney  
UHCD = Uniform Health Care Decisions Act.

| 47. VIRGINIA | YES | Optional  
Combined AD | Terminology: Agent § 54.1-2982  
Limitations:  
- Psycho-surgery  
- Non-therapeutic sterilization  
- Abortion  
- Decisions about “visitation” unless expressly authorized and other conditions met.  
Second opinion needed from capacity reviewer, unless patient is “unconscious or experiencing a profound impairment of consciousness due to trauma, stroke, or other acute physiological condition.” § 54.1-2983.2. |
| **VA. CODE ANN. § 54.1-2981 to – 2993 (West, 2016)**  
Combined AD |  |  |

| 48. WASHINGTON | NO |  
Immediately effective permitted. §11.125.090 | Terminology: Agent § 11.125.020  
Limitations:  
- Cross reference to guardianship law [RCWA 11.92.043(5)]:  
  - Electro-convulsive therapy  
  - Psycho-surgery  
  - Other psychiatric treatment that restricts physical movement  
  - Agent’s authority to delegate*  
* Permissible if expressly authorized  
Single physician to determine incapacity. 11.125.090. Directive to withhold or withdraw life-sustaining treatment requires certification of 1 doctor if from terminal illness, two doctors to certify permanent unconsciousness. RCWA 70.122.030 |
| **WASH. REV. CODE ANN. § 11.125.010 to .903 (West, 2016) (“Power of Attorney Act”).**  
Uniform Power of Attorney Act with health powers included.  
**Separate LW Statute:**  
**WASH. REV. CODE ANN. § 70.122.010 to -.925 (West, 2016) (“Natural Death Act”)** |  |  |

| 49. WEST VIRGINIA | YES | Optional  
Combined AD, but maintains separate Living Will and Medical Power of Attorney documents | Terminology: Medical Power of Attorney Representative or Representative § 16-30-3 (q)  
- Limit on agent’s authority to revoke a pre-need funeral contract  
Incapacity for persons w/ mental illness, intellectual disability or addiction requires second opinion from qualified physician or psychologist |
| **W. VA. CODE ANN. § 16-30-1 to -25 (West, 2016) (“Health Care Decisions Act”)** |  |  |

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### STATE HEALTH CARE STATUTES
Triggering Authority of Surrogate
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<table>
<thead>
<tr>
<th><strong>50. WISCONSIN</strong></th>
<th><strong>51. WYOMING</strong></th>
<th><strong>UNIFORM HEALTH-CARE DECISIONS ACT</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Special DPA</td>
<td>Combined AD</td>
<td>Combined Advance Directive</td>
</tr>
<tr>
<td>YES Optional, but disclosure statement is mandatory §155.30</td>
<td>NO</td>
<td>YES Optional</td>
</tr>
<tr>
<td>Terminology: Health Care Agent § 155.01 (4)</td>
<td></td>
<td>Terminology: Agent § 35-22-402</td>
</tr>
<tr>
<td>Limitations:     • Admission to facility for mental health or other listed conditions     • Electro-convulsive therapy     • Psychosurgery     • Experimental mental health research     • Drastic mental health treatment     • Admission to nursing home or residential facility – very limited unless expressly authorized in the document     • Nutrition &amp; hydration*     • Pregnancy limitation     * Refusal permissible only if specified conditions are met</td>
<td>Limitations: None specified</td>
<td>Mental health facility admission*</td>
</tr>
<tr>
<td>Immediately effective permitted §155.05</td>
<td>Immediately effective permitted §35-22-403(d)</td>
<td>Only if expressly authorized</td>
</tr>
<tr>
<td>Two doctors to find incapacity. 155.05. Withdrawal of feeding tube may not be performed if “the principal's attending physician advises that, in his or her professional judgment, the withholding or withdrawal will cause the principal pain or reduce the principal's comfort.” 155.20</td>
<td>One doctor to certify incapacity. § 35-22-412</td>
<td></td>
</tr>
</tbody>
</table>

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