

AN ACT relating to healthcare decisions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 311.621 is amended to read as follows:

As used in KRS 311.621 to 311.643:

- (1) "Adult" means a person eighteen (18) years of age or older and who is of sound mind;
- (2) "Advance directive" means a living will directive made in accordance with KRS 311.621 to 311.643, a living will or designation of health care surrogate executed prior to July 15, 1994, and any other document that provides directions relative to health care to be provided to the person executing the document;
- (3) "Artificially-provided nutrition and hydration" means sustenance or fluids that are artificially or technologically administered;
- (4) "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient;
- (5) "Decisional capacity" means the ability to make and communicate a health care decision;
- (6) "Directive" means a living will directive in writing voluntarily made by an adult in accordance with the provisions of KRS 311.621 to 311.643;
- (7) "Grantor" means an adult who has executed an advance directive in accordance with KRS 311.621 to 311.643;
- (8) "Health care decision" means consenting to, or withdrawing consent for, any medical procedure, treatment, or intervention;
- (9) "Health care facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care, and licensed pursuant to KRS Chapter 216B;
- (10) "Health care provider" means any health care facility or provider of health services,

including but not limited to, those licensed, certified, or regulated under the provisions of KRS Chapters 211, 216, 311, 312, 313, or 314;

(11) **"Health information" has the same meaning as in 42 U.S.C. sec. 1320d;**

(12) "Life-prolonging treatment" means any medical procedure, treatment, or intervention which:

(a) Utilizes mechanical or other artificial means to sustain, prolong, restore, or supplant a spontaneous vital function; and

(b) When administered to a patient would serve only to prolong the dying process.

"Life-prolonging treatment" shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain;

(13)~~(12)~~ "Medical order for scope of treatment" means an actionable medical order signed by a patient, a patient's legal surrogate, or a responsible party, and the patient's physician directing the use of life-sustaining treatment for the patient. A medical order for scope of treatment, if completed, shall implement or apply a health power of attorney or a living will directive if one exists;

(14)~~(13)~~ "Permanently unconscious" means a condition which, to a reasonable degree of medical probability, as determined solely by the patient's attending physician and one (1) other physician on clinical examination, is characterized by an absence of cerebral cortical functions indicative of consciousness or behavioral interaction with the environment;

(15)~~(14)~~ "Physician" means a person licensed to practice medicine in the Commonwealth of Kentucky;

(16)~~(15)~~ "Responsible party" means an adult who has authority under KRS 311.631 to make a health care decision for a patient who has not executed a living will directive;

(17)~~(16)~~ "Surrogate" means an adult who has been designated to **receive health**

information and make health care decisions in accordance with KRS 311.621 to 311.643; and

(18)~~(17)~~ "Terminal condition" means a condition caused by injury, disease, or illness which, to a reasonable degree of medical probability, as determined solely by the patient's attending physician and one (1) other physician, is incurable and irreversible and will result in death within a relatively short time, and where the application of life-prolonging treatment would serve only to artificially prolong the dying process.

➔Section 2. KRS 311.623 is amended to read as follows:

(1) An adult with decisional capacity may make a written living will directive that does any or all of the following:

- (a) Directs the withholding or withdrawal of life-prolonging treatment;~~{-or}~~
- (b) Directs the withholding or withdrawal of artificially provided nutrition or hydration;~~{-or}~~
- (c) Designates one (1) or more adults as a surrogate or successor surrogate to **receive health information and** make health care decisions on behalf of the grantor. During any period in which two (2) or more surrogates are serving, all decisions shall be by unanimous consent of all the acting surrogates unless the advance directive provides otherwise;~~{-or}~~
- (d) Directs the giving of all or any part of the adult's body upon death for any purpose specified in KRS 311.1929; **or**

(e) Authorizes a surrogate to receive health information or make a health care decision:

- 1. Only in a situation in which the grantor's attending physician has determined in good faith that the grantor does not have decisional capacity; or**
- 2. Immediately without the necessity of a determination of incapacity.**

- (2) Except as provided in KRS 311.633, a living will directive made pursuant to this section or a medical order for scope of treatment made pursuant to KRS 311.6225 shall be honored by a grantor's family, regular family physician or attending physician, and any health care facility of or in which the grantor is a patient.
- (3) For purposes of KRS 311.621 to 311.643, notification to any emergency medical responder as defined by KRS Chapter 211 or any paramedic as defined by KRS Chapter 311, of a person's authentic wish not to be resuscitated shall be recognized only if on a standard form or identification approved by the Kentucky Board of Medical Licensure, in consultation with the Cabinet for Health and Family Services, or a standard medical order for scope of treatment form approved by the Kentucky Board of Medical Licensure pursuant to KRS 311.6225.

➔Section 3. KRS 311.625 is amended to read as follows:

- (1) A living will directive made pursuant to KRS 311.623 ~~shall be~~ **may be** ~~substantially~~ in the following form, and may include other specific directions which are in accordance with accepted medical practice and not specifically prohibited by any other statute. If any other specific directions are held by a court of appropriate jurisdiction to be invalid, that invalidity shall not affect the directive.

"Living Will Directive

My wishes regarding life-prolonging treatment and artificially provided nutrition and hydration to be provided to me if I no longer have decisional capacity, have a terminal condition, or become permanently unconscious have been indicated by checking and initialing the appropriate lines below. By checking and initialing the appropriate lines, I specifically:

.... Designate as my health care surrogate(s) to **receive health information** **and** make health care decisions for me in accordance with this directive when I no longer have decisional capacity. If refuses or is not able to act for me, I designate as my health care surrogate(s).

.... Designate as my health care surrogate(s) to receive health information and make health care decisions for me in accordance with this directive immediately without the necessity for a determination of incapacity. If refuses or is not able to act for me, I designate as my health care surrogate(s).

Any prior designation is revoked.

If I do not designate a surrogate, the following are my directions to my attending physician. If I have designated a surrogate, my surrogate shall comply with my wishes as indicated below:

.... Direct that treatment be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical treatment deemed necessary to alleviate pain.

.... DO NOT authorize that life-prolonging treatment be withheld or withdrawn.

.... Authorize the withholding or withdrawal of artificially provided food, water, or other artificially provided nourishment or fluids.

.... DO NOT authorize the withholding or withdrawal of artificially provided food, water, or other artificially provided nourishment or fluids.

.... Authorize my surrogate, designated above, to withhold or withdraw artificially provided nourishment or fluids, or other treatment if the surrogate determines that withholding or withdrawing is in my best interest; but I do not mandate that withholding or withdrawing.

.... Authorize the giving of all or any part of my body upon death for any purpose specified in KRS 311.1929.

.... DO NOT authorize the giving of all or any part of my body upon death.

If I have not designated a health care surrogate to receive health information and make health care decisions for me in accordance with this directive immediately without the necessity of a determination of incapacity, and I am unable ~~In the absence~~

~~of my ability~~ to give directions regarding the use of life-prolonging treatment and artificially provided nutrition and hydration, it is my intention that this directive shall be honored by my attending physician, my family, and any surrogate designated pursuant to this directive as the final expression of my legal right to refuse medical or surgical treatment and I accept the consequences of the refusal.

If I have been diagnosed as pregnant and that diagnosis is known to my attending physician, this directive shall have no force or effect during the course of my pregnancy.

I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed this day of, 20~~[19]~~...

Signature and address of the grantor.

In our joint presence, the grantor, who is of sound mind and eighteen (18) years of age, or older, voluntarily dated and signed this writing or directed it to be dated and signed for the grantor.

Signature and address of witness.

Signature and address of witness.

OR

STATE OF KENTUCKY)

.....County)

Before me, the undersigned authority, came the grantor who is of sound mind and eighteen (18) years of age, or older, and acknowledged that he voluntarily dated and signed this writing or directed it to be signed and dated as above.

Done this day of, 20~~[19]~~...

Signature of Notary Public or other officer.

Date commission expires:.....

Execution of this document restricts withholding and withdrawing of some medical procedures. Consult Kentucky Revised Statutes or your attorney."

- (2) An advance directive shall be in writing, dated, and signed by the grantor~~[, or at the grantor's direction,]~~ and either witnessed by two (2) or more adults in the presence of the grantor and in the presence of each other, or acknowledged before a notary public or other person authorized to administer oaths. **If the grantor is unable to sign, one (1) of the witnesses may subscribe the grantor's signature in the grantor's presence and at the grantor's direction.** None of the following shall be a witness to or serve as a notary public or other person authorized to administer oaths in regard to any advance directive made under this section:
- (a) A blood relative of the grantor;
 - (b) A beneficiary of the grantor under descent and distribution statutes of the Commonwealth;
 - (c) An employee of a health care facility in which the grantor is a patient, unless the employee serves as a notary public;
 - (d) An attending physician of the grantor; or
 - (e) Any person directly financially responsible for the grantor's health care.
- (3) A person designated as a surrogate pursuant to an advance directive may resign at any time by giving written notice to the grantor; to the immediate successor surrogate, if any; to the attending physician; and to any health care facility which is then waiting for the surrogate to make a health care decision.
- (4) An employee, owner, director, or officer of a health care facility where the grantor is a resident or patient shall not be designated or act as surrogate unless related to the grantor within the fourth degree of consanguinity or affinity or a member of the same religious or fraternal order.

➔Section 4. KRS 311.629 is amended to read as follows:

- (1) A surrogate designated pursuant to an advance directive may **receive health information and** make health care decisions for the grantor which the grantor could make individually~~[if he or she had decisional capacity]~~, provided all the decisions

shall be made in accordance with the desires of the grantor as indicated in the advance directive. When making any health care decision for the grantor, the surrogate shall consider the recommendation of the attending physician and honor the decision made by the grantor as expressed in the advance directive.

- (2) The surrogate may not **receive health information or** make a health care decision in any situation in which the grantor's attending physician has determined in good faith that the grantor has decisional capacity, **unless the grantor authorized the surrogate to receive health information and make health care decisions immediately without the necessity of a determination of incapacity in an advance directive.** The attending physician shall proceed as if there were no designation if the surrogate is unavailable or refuses to make a health care decision.
- (3) A health care surrogate may authorize the withdrawal or withholding of artificially-provided nutrition and hydration in the following circumstances:
 - (a) When inevitable death is imminent, which for the purposes of this provision shall mean when death is expected, by reasonable medical judgment, within a few days; or
 - (b) When a patient is in a permanently unconscious state if the grantor has executed an advance directive authorizing the withholding or withdrawal of artificially-provided nutrition and hydration; or
 - (c) When the provision of artificial nutrition cannot be physically assimilated by the person; or
 - (d) When the burden of the provision of artificial nutrition and hydration itself shall outweigh its benefit. Even in the exceptions listed in paragraphs (a), (b), and (c) of this subsection, artificially-provided nutrition and hydration shall not be withheld or withdrawn if it is needed for comfort or the relief of pain.
- (4) **The surrogate shall be provided access to the appropriate health information of the grantor. The surrogate may authorize the release of health information to**

appropriate persons to ensure the continuity of the grantor's health care and may authorize the admission, discharge, or transfer of the grantor to or from a health care facility.

- (5) Notwithstanding the execution of an advance directive, life sustaining treatment and artificially-provided nutrition and hydration shall be provided to a pregnant woman unless, to a reasonable degree of medical certainty, as certified on the woman's medical chart by the attending physician and one (1) other physician who has examined the woman, the procedures will not maintain the woman in a way to permit the continuing development and live birth of the unborn child, will be physically harmful to the woman or prolong severe pain which cannot be alleviated by medication.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 405 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section:

(a) "Custodian" includes a caregiver or de facto custodian as defined in KRS 405.024, guardian, or legal custodian of a minor child;

(b) "Health care decision" means consenting to or withdrawing consent for any medical procedure, treatment, or intervention;

(c) "Health information" has the same meaning as in 42 U.S.C. sec. 1320d; and

(d) "Surrogate" means an adult who has been designated pursuant to this section to receive health information and make health care decisions for a minor child.

(2) A parent or custodian may designate a competent adult to serve as a surrogate for the minor child to receive health information and make health care decisions, including mental health treatment decisions, in the absence or inability of the parent or custodian by producing a document signed and dated by the parent or

guardian and either witnessed by two (2) or more adults in the presence of the parent or custodian and in the presence of each other, or acknowledged before a notary public or other person authorized to administer oaths.

(3) A person designated as a surrogate for a minor child shall not act as witness to the document designating the health care surrogate.

(4) A document designating a health care surrogate for a minor child may also designate an alternate surrogate. The alternate surrogate may assume his or her duties as surrogate if the original surrogate is not willing, able, or reasonably available to perform his or her duties.

(5) An attending physician shall proceed as if there were no surrogate designation if the surrogate or the designated alternate surrogate for a minor child is unavailable or refuses to make a health care decision.

(6) Unless a document designating a health care surrogate for a minor child states a time of termination, the designation shall remain in effect until revoked by the parent or custodian.