

SENATE BILL NO. 146

INTRODUCED BY

Eck *Ingelstrom Jacobson*

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM HEALTH CARE DECISIONS ACT; RECOGNIZING AN INDIVIDUAL'S RIGHT TO DECIDE HEALTH CARE ISSUES; ALLOWING AN INDIVIDUAL TO AUTHORIZE AN AGENT, GUARDIAN, OR SURROGATE TO MAKE HEALTH CARE DECISIONS; FACILITATING THE MAKING OF ADVANCE HEALTH CARE DIRECTIVES; PROVIDING STANDARDS FOR COMPLIANCE WITH HEALTH CARE DECISIONS; PROVIDING A PROCEDURE FOR RESOLUTION OF DISPUTES CONCERNING HEALTH CARE DECISIONS; AMENDING SECTIONS 50-10-101, 50-10-103, AND 52-3-803, MCA; AND REPEALING SECTIONS 50-9-101, 50-9-102, 50-9-103, 50-9-104, 50-9-105, 50-9-106, 50-9-107, 50-9-108, 50-9-110, 50-9-111, 50-9-201, 50-9-202, 50-9-203, 50-9-204, 50-9-205, AND 50-9-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 16] may be cited as the "Uniform Health Care Decisions Act".

NEW SECTION. Section 2. Definitions. In [sections 1 through 16], the following definitions apply:

(1) "Advance health care directive" means an individual instruction or a power of attorney for health care.

(2) "Agent" means an individual designated in a power of attorney for health care to make a health care decision for the individual granting the power.

(3) "Capacity" means an individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision.

(4) "Guardian" means a judicially appointed guardian or conservator who has the authority to make a health care decision for an individual.

(5) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect an individual's physical or mental condition.

(6) "Health care decision" means a decision made by an individual or the individual's agent,

1 guardian, or surrogate regarding the individual's health care, including:

2 (a) selection and discharge of health care providers and health care institutions;

3 (b) approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and
4 orders not to resuscitate; and

5 (c) directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms
6 of health care.

7 (7) "Health care institution" means an institution, facility, or agency licensed, certified, or otherwise
8 authorized or permitted by law to provide health care in the ordinary course of business.

9 (8) "Health care provider" means an individual licensed, certified, or otherwise authorized or
10 permitted by law to provide health care in the ordinary course of business or practice of a profession.

11 (9) "Individual instruction" means an individual's direction concerning a health care decision for
12 the individual.

13 (10) "Person" means an individual; corporation; business trust; estate; trust; partnership;
14 association; joint venture; government; governmental subdivision, agency, or instrumentality; or other legal
15 or commercial entity.

16 (11) "Physician" means an individual authorized to practice medicine under Title 37, chapter 3, or
17 osteopathy under Title 37, chapter 5.

18 (12) "Power of attorney for health care" means the designation of an agent to make health care
19 decisions for the individual granting the power.

20 (13) "Primary physician" means a physician designated by an individual or the individual's agent,
21 guardian, or surrogate to have primary responsibility for the individual's health care or, in the absence of
22 a designation or if the designated physician is not reasonably available, a physician who undertakes the
23 responsibility.

24 (14) "Reasonably available" means readily able to be contacted without undue effort and willing
25 and able to act in a timely manner considering the urgency of the patient's health care needs.

26 (15) "State" means a state of the United States, the District of Columbia, the Commonwealth of
27 Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

28 (16) "Supervising health care provider" means the primary physician or, if there is no primary
29 physician or if the primary physician is not reasonably available, the health care provider who has
30 undertaken primary responsibility for an individual's health care.

1 (17) "Surrogate" means an individual, other than an agent or guardian, who is authorized under
2 [sections 1 through 16] to make a health care decision for the patient.

3
4 NEW SECTION. Section 3. Advance health care directive. (1) An adult or emancipated minor may
5 give an individual instruction. The individual instruction may be oral or written and may be limited to take
6 effect only if a specified condition arises.

7 (2) An adult or emancipated minor may execute a power of attorney for health care, which may
8 authorize an agent to make any health care decision the principal could have made while having capacity.
9 The power of attorney for health care must be in writing, must be signed by the principal, remains in effect
10 notwithstanding the principal's later incapacity, and may include individual instructions. Unless related to
11 the principal by blood, marriage, or adoption, an agent may not be an owner, operator, or employee of a
12 long-term care facility, as defined in 50-5-101, at which the principal is receiving care.

13 (3) Unless otherwise specified in a power of attorney for health care, the authority of an agent
14 becomes effective only upon a determination that the principal lacks capacity and ceases to be effective
15 upon a determination that the principal has recovered capacity.

16 (4) Unless otherwise specified in a written advance health care directive, the primary physician
17 shall make a determination that an individual lacks or has recovered capacity or that another condition
18 exists that affects an individual instruction or the authority of an agent.

19 (5) An agent shall make a health care decision in accordance with the principal's individual
20 instructions, if any, and with other wishes to the extent known to the agent. Otherwise, the agent shall
21 make the decision in accordance with the agent's determination of the principal's best interest. In
22 determining the principal's best interest, the agent shall consider the principal's personal values to the
23 extent known to the agent.

24 (6) A health care decision made by an agent for a principal is effective without judicial approval.

25 (7) A written advance health care directive may include the individual's nomination of a guardian.

26 (8) An advance health care directive is valid for purposes of [sections 1 through 16] if it complies
27 with [sections 1 through 16], regardless of when or where executed or communicated.

28
29 NEW SECTION. Section 4. Revocation of advance health care directive. (1) An individual may
30 revoke the designation of an agent only by a signed writing or by personally informing the supervising

1 health care provider.

2 (2) An individual may revoke all or part of an advance health care directive, other than the
3 designation of an agent, at any time and in any manner that communicates an intent to revoke.

4 (3) A health care provider, agent, guardian, or surrogate who is informed of a revocation shall
5 promptly communicate the fact of the revocation to the supervising health care provider and to any health
6 care institution at which the patient is receiving care.

7 (4) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous
8 designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for
9 health care.

10 (5) An advance health care directive that conflicts with an earlier advance health care directive
11 revokes the earlier directive to the extent of the conflict.

12

13 **NEW SECTION. Section 5. Optional form for advance health care directive.** (1) The following
14 form may be used to create an advance health care directive. [Sections 1 through 4 and 6 through 16]
15 govern the effect of this or any other writing used to create an advance health care directive. An individual
16 may complete or modify all or any part of the following form:

17

ADVANCE HEALTH CARE DIRECTIVE

18

Explanation

19 You have the right to give instructions about your own health care. You also have the right to
20 name someone else to make health care decisions for you. This form lets you do either or both of these
21 things. It also lets you express your wishes regarding the donation of organs and the designation of your
22 primary physician. If you use this form, you may complete or modify all or any part of it. You are free to
23 use a different form.

24 Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual
25 as agent to make health care decisions for you if you become incapable of making your own decisions or
26 if you want someone else to make those decisions for you now even though you are still capable. You may
27 also name an alternate agent to act for you if your first choice is not willing, able, or reasonably available
28 to make decisions for you. Unless related to you by blood, marriage, or adoption, your agent may not be
29 an owner, operator, or employee of a long-term care facility, as defined in 50-5-101, at which you are
30 receiving care.

1 Unless the form you sign limits the authority of your agent, your agent may make all health care
2 decisions for you. This form has a place for you to limit the authority of your agent. You need not limit
3 the authority of your agent if you wish to rely on your agent for all health care decisions that may have to
4 be made. If you choose not to limit the authority of your agent, your agent will have the right to:

5 (a) consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose,
6 or otherwise affect a physical or mental condition;

7 (b) select or discharge health care providers and health care institutions;

8 (c) approve or disapprove diagnostic tests, surgical procedures, programs of medication, and orders
9 not to resuscitate; and

10 (d) direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other
11 forms of health care.

12 (2) Part 2 of this form lets you give specific instructions about any aspect of your health care.
13 Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal
14 of treatment to keep you alive, including the provision of artificial nutrition and hydration and the provision
15 of pain relief. Space is also provided for you to add to the choices you have made or for you to write out
16 any additional wishes.

17 (3) Part 3 of this form lets you express an intention to donate your bodily organs, tissues, and parts
18 following your death.

19 (4) Part 4 of this form lets you designate a physician to have primary responsibility for your health
20 care.

21 (5) After completing this form, sign and date the form at the end. It is recommended but not
22 required that you request two other individuals to sign as witnesses. Give a copy of the signed and
23 completed form to your physician, to any other health care providers you may have, to any health care
24 institution at which you are receiving care, and to any health care agents you have named. You should talk
25 to the person you have named as agent to make sure that the person understands your wishes and is
26 willing to take the responsibility.

27 (6) You have the right to revoke this advance health care directive or replace this form at any time.

28 PART 1

29 POWER OF ATTORNEY FOR HEALTH CARE

30 (a) DESIGNATION OF AGENT: I designate the following person as my agent to make health care

1 decisions for me:

2 _____

3 (name of person you choose as agent)

4 _____

5 (address) (city) (state) (zip code)

6 _____

7 (home phone) (work phone)

8 OPTIONAL: If I revoke my agent's authority or if my agent is not willing, able, or reasonably
9 available to make a health care decision for me, I designate the following person as my first alternate agent:

10 _____

11 (name of person you choose as first alternate agent)

12 _____

13 (address) (city) (state) (zip code)

14 _____

15 (home phone) (work phone)

16 OPTIONAL: If I revoke the authority of my agent and my first alternate agent or if neither is willing,
17 able, or reasonably available to make a health care decision for me, I designate the following person as my
18 second alternate agent:

19 _____

20 (name of person you choose as second alternate agent)

21 _____

22 (address) (city) (state) (zip code)

23 _____

24 (home phone) (work phone)

25 (b) AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me,
26 including decisions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms
27 of health care to keep me alive, except as I state here:

28 _____

29 _____

30 _____

1 _____
 2 (Add additional sheets if needed.)
 3 (c) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: Unless I mark the following box, my
 4 agent's authority becomes effective when my primary physician determines that I am unable to make my
 5 own health care decisions. If I mark this box [], my agent's authority to make health care decisions for
 6 me takes effect immediately.

7 (d) AGENT'S OBLIGATION: My agent shall make health care decisions for me in accordance with
 8 this power of attorney for health care, any instructions that I give in Part 2 of this form, and my other
 9 wishes to the extent known to my agent. To the extent that my wishes are unknown, my agent shall make
 10 health care decisions for me in accordance with what my agent determines to be in my best interest. In
 11 determining my best interest, my agent shall consider my personal values to the extent known to my agent.

12 (e) NOMINATION OF GUARDIAN: If a guardian needs to be appointed for me by a court, I
 13 nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act
 14 as guardian, then I nominate the alternate agents whom I have named in this form, in the order designated.

15 PART 2

16 INSTRUCTIONS FOR HEALTH CARE

17 If you are satisfied to allow your agent to determine what is best for you in making end-of-life
 18 decisions, you need not fill out this part of the form. If you do fill out this part of the form, you may strike
 19 any wording you do not want.

20 (f) END-OF-LIFE DECISIONS: I direct that my health care providers and others involved in my care
 21 provide, withhold, or withdraw treatment in accordance with the choice that I have marked below:

22 [] (i) Choice Not to Prolong Life

23 I do not want my life to be prolonged if:

24 (A) I have an incurable and irreversible condition that will result in my death within a relatively short
 25 time;

26 (B) I become unconscious and, to a reasonable degree of medical certainty, I will not regain
 27 consciousness; or

28 (C) the likely risks and burdens of treatment would outweigh the expected benefits.

29 OR

30 [] (ii) Choice to Prolong Life

1 I want my life to be prolonged as long as possible within the limits of generally accepted health care
2 standards.

3 (g) ARTIFICIAL NUTRITION AND HYDRATION: Artificial nutrition and hydration must be provided,
4 withheld, or withdrawn in accordance with the choice I have made in paragraph (f) unless I mark the
5 following box. If I mark this box , artificial nutrition and hydration must be provided regardless of my
6 condition and regardless of the choice I have made in paragraph (f).

7 (h) RELIEF FROM PAIN: Except as I state in the following space, I direct that treatment for
8 alleviation of pain or discomfort be provided at all times, even if it hastens my death:

9 _____
10 _____

11 (i) OTHER WISHES: (If you do not agree with any of the optional choices above and wish to write
12 your own or if you wish to add to the instructions that you have given above, you may do so here.) I direct
13 that:

14 _____
15 _____

16 (Add additional sheets if needed.)

17 PART 3

18 DONATION OF ORGANS AT DEATH

19 (OPTIONAL)

20 (j) DONATION: Upon my death (mark applicable box):

21 (i) I give any needed organs, tissues, or parts;

22 OR

23 (ii) I give the following organs, tissues, or parts only:

24 _____

25 (iii) My gift is for the following purposes (strike any of the following you do not want):

26 (A) Transplant

27 (B) Therapy

28 (C) Research

29 (D) Education

PART 4

PRIMARY PHYSICIAN

(OPTIONAL)

(k) DESIGNATION OF PRIMARY PHYSICIAN: I designate the following physician as my primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my alternate primary physician:

(name of physician)

(address) (city) (state) (zip code)

(phone)

(l) EFFECT OF COPY: A copy of this form has the same effect as the original.

(m) SIGNATURES: Sign and date the form here:

(date)

(sign your name)

(address)

(print your name)

(city) (state)

(Optional) SIGNATURES OF WITNESSES:

First witness

Second witness



1	_____	_____
2	(print name)	(print name)
3	_____	_____
4	(address)	(address)
5	_____	_____
6	(city) (state)	(city) (state)
7	_____	_____
8	(signature of witness)	(signature of witness)
9	_____	_____
10	(date)	(date)

12 **NEW SECTION. Section 6. Designation of surrogate -- decisions by surrogate.** (1) A surrogate
 13 may make a health care decision for a patient who is an adult or emancipated minor if the patient has been
 14 determined by the primary physician to lack capacity and an agent or guardian has not been designated or
 15 appointed or is not reasonably available.

16 (2) An adult or emancipated minor may designate any individual to act as surrogate by personally
 17 informing the supervising health care provider. In the absence of a designation or if the designee is not
 18 reasonably available, any member or members of the following classes of the patient's family who are
 19 reasonably available, in descending order of priority, may act as surrogate:

- 20 (a) the spouse, unless legally separated;
- 21 (b) an adult child;
- 22 (c) a parent; or
- 23 (d) an adult brother or sister.

24 (3) If none of the individuals eligible to act as surrogate under subsection (2) is reasonably
 25 available, an adult who has exhibited special care and concern for the patient, who is familiar with the
 26 patient's personal values, and who is reasonably available may act as surrogate.

27 (4) A surrogate shall communicate the surrogate's assumption of authority as promptly as
 28 practicable to the members of the patient's family specified in subsection (2) who can be readily contacted.

29 (5) If more than one member of a class assumes authority to act as surrogate and they do not
 30 agree on a health care decision and the supervising health care provider is so informed, the supervising

1 health care provider shall comply with the decision of a majority of the members of that class who have
2 communicated their views to the supervising health care provider. If the class is evenly divided concerning
3 the health care decision and the supervising health care provider is so informed, that class and all
4 individuals having lower priority are disqualified from making the decision.

5 (6) A surrogate shall make a health care decision in accordance with the patient's individual
6 instructions, if any, and with other wishes to the extent known to the surrogate. Otherwise, the surrogate
7 shall make the decision in accordance with the surrogate's determination of the patient's best interest. In
8 determining the patient's best interest, the surrogate shall consider the patient's personal values to the
9 extent known to the surrogate.

10 (7) A health care decision made by a surrogate for a patient is effective without judicial approval.

11 (8) An individual may at any time disqualify another, including a member of the individual's family,
12 from acting as the individual's surrogate by a signed writing or by personally informing the supervising
13 health care provider of the disqualification.

14 (9) Unless related to the patient by blood, marriage, or adoption, a surrogate may not be an owner,
15 operator, or employee of a long-term care facility, as defined in 50-5-101, at which the patient is receiving
16 care.

17 (10) A supervising health care provider may require an individual who claims the right to act as
18 surrogate to provide, under penalty of perjury, a written declaration that states facts and circumstances
19 reasonably sufficient to establish the claimed authority.

20

21 **NEW SECTION. Section 7. Decisions by guardian -- priority and effectiveness.** (1) A guardian
22 shall comply with the ward's individual instructions and may not revoke the ward's advance health care
23 directive unless the appointing court expressly so authorizes.

24 (2) Absent a court order to the contrary, a health care decision of an agent takes precedence over
25 that of a guardian.

26 (3) A health care decision made by a guardian for the ward is effective without judicial approval.

27

28 **NEW SECTION. Section 8. Obligations of health care provider.** (1) Before implementing a health
29 care decision made for a patient, a supervising health care provider, if possible, shall promptly communicate
30 to the patient the decision made and the identity of the person making the decision.

1 (2) A supervising health care provider who knows of the existence of an advance health care
2 directive, a revocation of an advance health care directive, or a designation or disqualification of a surrogate
3 shall promptly record its existence in the patient's health care record and, if it is in writing, shall request
4 a copy for the health care record. If a copy is furnished, the supervising health care provider shall arrange
5 for its maintenance in the health care record.

6 (3) A primary physician who makes or is informed of a determination that a patient lacks or has
7 recovered capacity or that another condition exists that affects an individual instruction or the authority of
8 an agent, guardian, or surrogate shall promptly record the determination in the patient's health care record
9 and communicate the determination to the patient, if possible, and to any person then authorized to make
10 health care decisions for the patient.

11 (4) Except as provided in subsections (5) and (6), a health care provider or health care institution
12 providing care to a patient shall:

13 (a) comply with an individual instruction of the patient and with a reasonable interpretation of that
14 instruction made by a person then authorized to make health care decisions for the patient; and

15 (b) comply with a health care decision for the patient made by a person then authorized to make
16 health care decisions for the patient to the same extent as if the health care decision had been made by
17 the patient while having capacity.

18 (5) A health care provider may, for reasons of conscience, decline to comply with an individual
19 instruction or health care decision. A health care institution may decline to comply with an individual
20 instruction or health care decision if it is contrary to a policy of the health care institution that is expressly
21 based on reasons of conscience and if the policy was timely communicated to the patient or to a person
22 then authorized to make health care decisions for the patient.

23 (6) A health care provider or institution may decline to comply with an individual instruction or
24 health care decision that requires medically ineffective health care or health care contrary to generally
25 accepted health care standards applicable to the health care provider or health care institution.

26 (7) A health care provider or health care institution that declines to comply with an individual
27 instruction or health care decision shall:

28 (a) promptly so inform the patient, if possible, and any person then authorized to make health care
29 decisions for the patient;

30 (b) provide continuing care to the patient until a transfer can be effected; and

1 (c) unless the patient or person then authorized to make health care decisions for the patient
 2 refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another
 3 health care provider or health care institution that is willing to comply with the health care instruction or
 4 health care decision.

5 (8) A health care provider or health care institution may not require or prohibit the execution or
 6 revocation of an advance health care directive as a condition for providing health care.

7
 8 **NEW SECTION. Section 9. Health care information.** Unless otherwise specified in an advance
 9 health care directive, a person then authorized to make health care decisions for a patient has the same
 10 rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any
 11 other health care information.

12
 13 **NEW SECTION. Section 10. Immunities.** (1) A health care provider or health care institution
 14 acting in good faith and in accordance with generally accepted health care standards applicable to the
 15 health care provider or health care institution is not subject to civil or criminal liability or to discipline for
 16 unprofessional conduct for:

17 (a) complying with a health care decision of a person apparently having authority to make a health
 18 care decision for a patient, including a decision to withhold or withdraw health care;

19 (b) declining to comply with a health care decision of a person based on a belief that the person
 20 then lacked authority; or

21 (c) complying with an advance health care directive and assuming that the directive was valid
 22 when made and has not been revoked or terminated.

23 (2) An agent or surrogate acting under the provisions of [sections 1 through 16] is not subject to
 24 civil or criminal liability or to discipline for unprofessional conduct for health care decisions made in good
 25 faith.

26
 27 **NEW SECTION. Section 11. Statutory damages.** (1) A health care provider or health care
 28 institution that intentionally violates [sections 1 through 16] is subject to liability to the aggrieved individual
 29 for damages of \$500 or actual damages resulting from the violation, whichever is greater, plus reasonable
 30 attorney fees.

1 (2) A person who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's
2 advance health care directive or a revocation of an advance health care directive without the individual's
3 consent or who coerces or fraudulently induces an individual to give, revoke, or not give an advance health
4 care directive is subject to liability to that individual for damages of \$2,500 or actual damages resulting
5 from the action, whichever is greater, plus reasonable attorney fees.

6

7 **NEW SECTION. Section 12. Capacity.** (1) [Sections 1 through 16] do not affect the right of an
8 individual to make health care decisions while having capacity to do so.

9 (2) An individual is presumed to have capacity to make a health care decision, to give or revoke
10 an advance health care directive, and to designate or disqualify a surrogate.

11

12 **NEW SECTION. Section 13. Effect of copy.** A copy of a written advance health care directive,
13 revocation of an advance health care directive, or designation or disqualification of a surrogate has the
14 same effect as the original.

15

16 **NEW SECTION. Section 14. Scope and effect.** (1) [Sections 1 through 16] do not create a
17 presumption concerning the intention of an individual who has not made or who has revoked an advance
18 health care directive.

19 (2) Death resulting from the withholding or withdrawal of health care in accordance with [sections
20 1 through 16] does not for any purpose constitute a suicide or homicide or legally impair or invalidate a
21 policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or
22 annuity to the contrary.

23 (3) [Sections 1 through 16] do not authorize mercy killing, assisted suicide, euthanasia, or the
24 provision, withholding, or withdrawal of health care, to the extent prohibited by other statutes of this state.

25 (4) [Sections 1 through 16] do not authorize or require a health care provider or health care
26 institution to provide health care contrary to generally accepted health care standards applicable to the
27 health care provider or health care institution.

28 (5) [Sections 1 through 16] do not authorize an agent or surrogate to consent to the admission of
29 an individual to a mental health care institution unless the individual's written advance health care directive
30 expressly so provides.

1 (6) [Sections 1 through 16] do not affect other statutes of this state governing treatment for mental
 2 illness of an individual involuntarily committed to a mental health facility under Title 53, chapter 21, part
 3 1.

4
 5 **NEW SECTION. Section 15. Judicial relief.** (1) The district court may enjoin or direct a health care
 6 decision or may order other equitable relief upon the petition of:

7 (a) a patient;

8 (b) the patient's agent, guardian, or surrogate;

9 (c) a health care provider or health care institution involved with the patient's care; or

10 (d) an individual described in [section 6(2) or (3)].

11 (2) A proceeding under this section is governed by the provisions of Title 72, chapter 5, part 4.

12
 13 **NEW SECTION. Section 16. Uniformity of application and construction.** [Sections 1 through 16]
 14 must be applied and construed to effectuate the general purpose to make uniform the law with respect to
 15 the subject matter of [sections 1 through 16] among states enacting it.

16
 17 **Section 17.** Section 50-10-101, MCA, is amended to read:

18 **"50-10-101. Definitions.** As used in this part, unless the context clearly requires otherwise, the
 19 following definitions apply:

20 ~~(1) "Attending physician" has the meaning provided in 50-9-102.~~

21 ~~(2)~~(1) "Board" means the state board of medical examiners.

22 ~~(3)~~(2) "Department" means the department of health and environmental sciences.

23 ~~(4)~~(3) "DNR identification" means a standardized identification card, form, necklace, or bracelet
 24 of uniform size and design, approved by the department, that signifies that the possessor is a ~~qualified~~
 25 ~~patient person who has executed a power of attorney for health care, as defined provided for in 50-9-102~~
 26 [sections 1 through 16], or that the possessor's ~~attending primary~~ physician has issued a do not resuscitate
 27 order for the possessor and has documented the grounds for the order in the possessor's medical file.

28 ~~(5)~~(4) "Do not resuscitate order" means a directive from a ~~licensed~~ physician that emergency
 29 life-sustaining procedures should not be administered to a particular person.

30 ~~(6)~~(5) "Do not resuscitate protocol" means a standardized method of procedure, approved by the

1 board and adopted in the rules of the department, for the withholding of emergency life-sustaining
2 procedures by physicians and emergency medical services personnel.

3 ~~(7)(6)~~ "Emergency medical services personnel" ~~has the meaning provided in 50-9-102~~ means paid
4 or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other
5 emergency services personnel acting within the ordinary course of their professions.

6 ~~(8)(7)~~ "Health care facility" has the meaning provided in 50-5-101.

7 ~~(9)(8)~~ "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of
8 cardiopulmonary resuscitation.

9 ~~(10)(9)~~ "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this
10 state.

11 (10) "Primary physician" has the meaning provided in [section 2]."

12
13 **Section 18.** Section 50-10-103, MCA, is amended to read:

14 **"50-10-103. Adherence to do not resuscitate protocol -- transfer of patients.** (1) Emergency
15 medical services personnel other than physicians shall comply with the do not resuscitate protocol when
16 presented with ~~either a~~ a do not resuscitate identification, an oral do not resuscitate order issued directly by
17 a physician, or a written do not resuscitate order entered on a form prescribed by the department.

18 (2) ~~An attending A~~ A physician or a health care facility unwilling or unable to comply with the do not
19 resuscitate protocol shall take all reasonable steps to transfer a person possessing DNR identification to
20 another physician or to a health care facility in which the do not resuscitate protocol will be followed."

21
22 **Section 19.** Section 52-3-803, MCA, is amended to read:

23 **"52-3-803. Definitions.** As used in this part, the following definitions apply:

24 (1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter,
25 clothing, or services necessary to maintain the physical or mental health of an older person or a
26 developmentally disabled person without lawful authority. A declaration made pursuant to ~~50-9-103~~
27 [section 5] constitutes lawful authority.

28 (2) "Developmentally disabled person" means a person 18 years of age or older who is
29 developmentally disabled as defined in 53-20-102.

30 (3) "Exploitation" means the unreasonable use of an older person or a developmentally disabled

1 person, the person's money, or the person's property to the advantage of another by means of duress,
2 menace, fraud, or undue influence.

3 (4) "Incapacitated person" has the meaning given in 72-5-101.

4 (5) "Long-term care facility" means a facility defined in 50-5-101.

5 (6) "Mental injury" means an identifiable and substantial impairment of an older person's intellectual
6 or psychological functioning or well-being.

7 (7) "Neglect" means the failure of a guardian, an employee of a public or private residential
8 institution, facility, home, or agency, or any person legally responsible in a residential setting for an older
9 person's or a developmentally disabled person's welfare to provide, to the extent of legal responsibility,
10 food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person
11 or the developmentally disabled person.

12 (8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution
13 under 52-3-825(2), the person 60 years of age or older must be unable to provide personal protection from
14 abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of
15 frailties or dependencies brought about by advanced age.

16 (9) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any
17 bodily organ or function.

18 (10) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
19 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."
20

21 **NEW SECTION.** **Section 20. Repealer.** Sections 50-9-101, 50-9-102, 50-9-103, 50-9-104,
22 50-9-105, 50-9-106, 50-9-107, 50-9-108, 50-9-110, 50-9-111, 50-9-201, 50-9-202, 50-9-203, 50-9-204,
23 50-9-205, and 50-9-206, MCA, are repealed.
24

25 **NEW SECTION.** **Section 21. Severability.** If a part of [this act] is invalid, all valid parts that are
26 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
27 applications, the part remains in effect in all valid applications that are severable from the invalid
28 applications.
29

-END-