

1 *House* BILL NO. *250*  
2 INTRODUCED BY *Chh Euk*  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM HEALTH CARE DECISIONS ACT WITH  
5 CERTAIN REVISIONS; RECOGNIZING AN INDIVIDUAL'S RIGHT TO DECIDE HEALTH CARE ISSUES;  
6 ALLOWING AN INDIVIDUAL TO AUTHORIZE AN AGENT, GUARDIAN, OR SURROGATE TO MAKE HEALTH  
7 CARE DECISIONS; FACILITATING THE MAKING OF ADVANCE HEALTH CARE DIRECTIVES; PROVIDING  
8 STANDARDS FOR COMPLIANCE WITH HEALTH CARE DECISIONS; PROVIDING A PROCEDURE FOR  
9 RESOLUTION OF DISPUTES CONCERNING HEALTH CARE DECISIONS; AMENDING SECTIONS 50-10-101,  
10 50-10-103, 50-10-104, AND 52-3-803, MCA; AND REPEALING SECTIONS 50-9-101, 50-9-102, 50-9-103,  
11 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,  
12 50-9-204, 50-9-205, AND 50-9-206, MCA."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15  
16 **NEW SECTION. Section 1. Short title.** [Sections 1 through 16] may be cited as the "Montana  
17 Health Care Decisions Act".

18  
19 **NEW SECTION. Section 2. Definitions.** In [sections 1 through 16], the following definitions apply:

- 20 (1) "Advance health care directive" means an individual instruction or a power of attorney for  
21 health care.
- 22 (2) "Agent" means an individual designated in a power of attorney for health care to make a health  
23 care decision for the individual granting the power.
- 24 (3) "Capacity" means an individual's ability to understand the significant benefits, risks, and  
25 alternatives to proposed health care and to make and communicate a health care decision.
- 26 (4) "Guardian" means a judicially appointed guardian or conservator who has the authority to make  
27 a health care decision for an individual.
- 28 (5) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, or  
29 otherwise affect an individual's physical or mental condition.
- 30 (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) (a) "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 (b) The term does not include emergency services personnel as defined in 50-10-101.

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

14 (10) "Life-sustaining treatment" means a medical procedure or intervention that when administered  
15 to a patient with a terminal condition serves only to prolong the dying process.

16 (11) "Person" means an individual; corporation; business trust; estate; trust; partnership;  
17 association; joint venture; government; governmental subdivision, agency, or instrumentality; or other legal  
18 or commercial entity.

19 (12) "Physician" means an individual authorized to practice medicine under Title 37, chapter 3, or  
20 osteopathy under Title 37, chapter 5.

21 (13) "Power of attorney for health care" means the designation of an agent to make health care  
22 decisions for the individual granting the power.

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

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

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

1           (17) "Supervising health care provider" means the primary physician or, if there is no primary  
2 physician or if the primary physician is not reasonably available, the health care provider who has  
3 undertaken primary responsibility for an individual's health care including an advanced practice registered  
4 nurse or a physician assistant-certified.

5           (18) "Surrogate" means an individual, other than an agent or guardian, who is authorized under  
6 [section 6] to make a health care decision for the patient.

7           (19) "Terminal condition" means an incurable or irreversible condition that without the  
8 administration of life-sustaining treatment will, in the opinion of the primary physician, result in death within  
9 a relatively short time.

10  
11           **NEW SECTION. Section 3. Advance health care directive.** (1) An adult, with capacity, or a minor,  
12 with capacity who is authorized to consent to the provision of health care services under 41-1-402, may  
13 give an individual instruction. The individual instruction may be oral or written and may be limited to take  
14 effect only if a specified condition arises. An oral instruction is valid only if made to a health care provider,  
15 an individual who may serve as an agent under a health care power of attorney, or a surrogate.

16           (2) An adult, with capacity, or a minor, with capacity who is authorized to consent to the provision  
17 of health care services under 41-1-402, may execute a power of attorney for health care, which may  
18 authorize an agent to make any health care decision the principal could have made while having capacity.  
19 The power of attorney for health care must be in writing and must be signed by the principal in the  
20 presence of at least two subscribing witnesses or witnessed and certified by a notary public. The power  
21 of attorney for health care remains in effect notwithstanding the principal's later incapacity and may include  
22 individual instructions. Unless related to the principal by blood, marriage, or adoption, an agent may not  
23 be an owner, operator, or employee of a long-term care facility, as defined in 50-5-101, at which the  
24 principal is receiving care.

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

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

1 (5) After consultation with the primary physician or supervising health care provider, an agent shall  
 2 make a health care decision in accordance with the principal's individual instructions, if any, and with other  
 3 wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with  
 4 the agent's determination of the principal's best interest. In determining the patient's best interest, the  
 5 agent shall consider the patient's personal values to the extent known to the agent.

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

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

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

10  
 11 **NEW SECTION. Section 4. Revocation of advance health care directive.** (1) An individual may  
 12 revoke all or part of an advance health care directive, including the designation of an agent, at any time and  
 13 in any manner that communicates an intent to revoke.

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

17 (3) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous  
 18 designation of a spouse as agent unless otherwise specified in the decree or in a power of attorney for  
 19 health care.

20 (4) An advance health care directive that conflicts with an earlier advance health care directive  
 21 revokes the earlier directive to the extent of the conflict.

22  
 23 **NEW SECTION. Section 5. Optional form for advance health care directive.** The following form  
 24 may be used to create an advance health care directive. [Sections 1 through 4 and 6 through 16] govern  
 25 the effect of this or any other writing used to create an advance health care directive. An individual may  
 26 complete or modify all or any part of the following form:

27 **EXPLANATION OF THE ADVANCE HEALTH CARE DIRECTIVES**

28 You have the right to give instructions about your own health care. You also have the right to  
 29 name someone else to make health care decisions for you. You have the right to donate organs. You may  
 30 even designate your own primary physician to help you. You may use this form and may complete or

1 modify all or any part of it. You are free to use a different form. This form is not intended to be presented  
2 to emergency medical services personnel for the purpose of requiring emergency medical services personnel  
3 to withhold or discontinue resuscitation measures. Emergency medical services personnel may make  
4 instantaneous decisions concerning resuscitation measures only when presented with authorized "Do Not  
5 Resuscitate" (DNR) identification, such as an official bracelet or form. You may request DNR identification  
6 from your physician if your physician has issued a do not resuscitate order for you or if you have a terminal  
7 condition and an advance healthcare directive that is consistent with the withholding or withdrawal of  
8 resuscitation measures. You should discuss with your physician any questions or concerns you have about  
9 DNR identification.

10 **(1) Explanation of Part 1 -- Health Care Power of Attorney**

11 Part 1 lets you name another individual as agent to make health care decisions for you if you  
12 become incapable of making your own decisions or if you want someone else to make those decisions for  
13 you now even though you are still capable. You may also name an alternate agent to act for you if your  
14 first choice is not willing, able, or reasonably available to make decisions for you. Your agent may not be  
15 an owner, operator, or employee of a long-term care facility at which you are receiving care unless related  
16 to you by blood, marriage, or adoption. You may elect to have your agent make decisions for you whether  
17 or not you are incapacitated or terminally ill.

18 You may also nominate a guardian to make decisions not related to health care in case a court is  
19 petitioned to appoint a guardian.

20 You may limit the decisions your agent makes for you. Your agent may make all health care  
21 decisions for you unless the form you sign limits the authority of your agent. This form has a place for you  
22 to limit the authority of your agent. You need not limit the authority of your agent if you wish to rely on  
23 your agent for all health care decisions that may have to be made. If you choose not to limit the authority  
24 of your agent, your agent will have the right to:

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

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

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

30 (d) direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other

1 forms of health care.

2 (2) **Explanation of Part 2 -- Health Care Instructions**

3 This form lets you give specific instructions about any aspect of your health care. Choices are  
4 provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment  
5 to keep you alive, including the provision of artificial nutrition and hydration and the provision of pain relief.  
6 Space is also provided for you to add to the choices you have made or for you to write out any additional  
7 wishes.

8 (3) **Explanation of Part 3 -- Intention to Donate Bodily Organs, Tissues, and Parts**

9 You may use this form to express an intention to donate your bodily organs, tissues, and parts  
10 following your death.

11 (4) **Explanation of Part 4 -- Instructions for Designating a Primary Physician**

12 You may use this form to designate a physician to have primary responsibility for your health care.  
13 The physician you designate will decide whether you are incapacitated and are unable to make your own  
14 health care decisions.

15 (5) **Explanation of Part 5 -- Signatures, Distribution, and Revision**

16 After completing this form, sign and date the form at the end in the presence of two witnesses or  
17 a notary public.

18 Give a copy of the signed and completed form to your physician, to any other health care providers  
19 you may have, to any health care institution at which you are receiving care, and to any health care agents  
20 you have named. Copies have the same legal effect as the original for this purpose. You should talk to  
21 the person you have named as agent to make sure that the person understands your wishes and is willing  
22 to take the responsibility.

23 You have the right to revoke this advance health care directive or replace this form at any time.  
24 You may revoke this directive at any time and in any manner that communicates an intent to revoke.

25 **PART 1**

26 **POWER OF ATTORNEY FOR HEALTH CARE**

27 DESIGNATION OF PRIMARY AGENT: I designate the following person as my agent to make health  
28 care decisions for me:

29 \_\_\_\_\_

30 (name of person you choose as agent)

1 \_\_\_\_\_

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

3 \_\_\_\_\_

4 (home phone) (work phone)

5 FIRST ALTERNATE AGENT: I designate the following person as my first alternate agent if for any  
6 reason my primary agent cannot serve:

7 \_\_\_\_\_

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

9 \_\_\_\_\_

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

11 \_\_\_\_\_

12 (home phone) (work phone)

13 SECOND ALTERNATE AGENT: I designate the following person as my second alternate agent if  
14 for any reason my first alternate agent cannot serve:

15 \_\_\_\_\_

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

17 \_\_\_\_\_

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

19 \_\_\_\_\_

20 (home phone) (work phone)

21 AGENT'S AUTHORITY: My agent is authorized to make all health care decisions for me, including  
22 decisions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health  
23 care to keep me alive, except as I state here or in Part 2:

24 \_\_\_\_\_

25 \_\_\_\_\_

26 \_\_\_\_\_

27 \_\_\_\_\_

28 (Add additional sheets if needed.)

29 WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when  
30 my primary physician or supervising health care provider determines that I am unable to make my own

1 health care decisions unless I designate that my agent's authority to make health care decisions for me  
 2 should take effect immediately. If you want the authority to be effective immediately, select which you  
 3 want by marking one box below:

4  I want my agent's authority to become effective immediately.

5  I want my agent's authority to become effective immediately, but if possible, I want to be  
 6 informed of my agent's healthcare decisions before the decisions are implemented.

7 **AGENT'S OBLIGATION:** My agent shall make health care decisions for me in accordance with this  
 8 power of attorney for health care, any instructions that I give in Part 2 of this form, and my other wishes  
 9 to the extent known to my agent. To the extent that my wishes are unknown, my agent shall make health  
 10 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 **NOMINATION OF GUARDIAN:** If a guardian needs to be appointed for me by a court, I nominate  
 13 the agent designated in this form. If that agent is not willing, able, or reasonably available to act as  
 14 guardian, then I nominate the alternate agents whom I have named in this form, in the order designated.

## 15 **PART 2**

### 16 **INSTRUCTIONS FOR END OF LIFE HEALTH CARE DECISIONS**

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 out any wording you do not want and you may add any additional instructions that you wish.

20 **NOTE:** This form does not apply to emergency medical personnel and does not authorize a "Do Not  
 21 Resuscitate" (DNR) order to the personnel.

22 **DECISIONS TO PROLONG LIFE:** I direct that my health care providers and others involved in my  
 23 care provide, withhold, or withdraw treatment in accordance with the choice that I have marked below.  
 24 Check one of the boxes if you wish:

25  I choose to prolong my life as long as possible within the limits of generally accepted health  
 26 care standards. Artificial nutrition and hydration must be provided in accordance with this choice.

27  I choose not to prolong my life if:

28  I have an incurable and irreversible condition that without the administration of  
 29 life-sustaining treatment will, in the opinion of my primary physician or supervising health care provider,  
 30 result in my death within a relatively short time; or





1 (2)  I give only the following organs, tissues, or parts:

2 \_\_\_\_\_

3 My gift is for the following purposes (check any of the following you choose):

4 (1)  Transplant

5 (2)  Therapy

6 (3)  Research

7 (4)  Education

8 **PART 4**

9 **DESIGNATION OF A PRIMARY PHYSICIAN**

10

11 I designate the following physician as my primary physician:

12 \_\_\_\_\_

13 (name of physician)

14 \_\_\_\_\_

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

16 \_\_\_\_\_

17 (phone)

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

20 \_\_\_\_\_

21 (name of physician)

22 \_\_\_\_\_

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

24 \_\_\_\_\_

25 (phone)

26 **PART 5**

27 **SIGNATURES**

28

29 \_\_\_\_\_

30 (date)

\_\_\_\_\_

(sign your name)

1 \_\_\_\_\_  
 2 (address) (print your name)

3 \_\_\_\_\_  
 4 (city) (state)

5 SIGNATURES OF WITNESSES (OR USE A NOTARY PUBLIC RATHER THAN WITNESSES):

6 First witness Second witness  
 7 \_\_\_\_\_  
 8 (print name) (print name)

9 \_\_\_\_\_  
 10 (address) (address)

11 \_\_\_\_\_  
 12 (city) (state) (city) (state)  
 13 \_\_\_\_\_  
 14 (signature of witness) (signature of witness)

15 \_\_\_\_\_  
 16 (date) (date)

17 OR

18 STATE OF MONTANA )  
 19 COUNTY OF \_\_\_\_\_ )

20 Subscribed, sworn to, and acknowledged before me by the above named this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

21 \_\_\_\_\_  
 22 Notary Public for the State of Montana  
 23 My Commission Expires \_\_\_\_\_

25 **NEW SECTION. Section 6. Designation of surrogate -- decisions by surrogate.** (1) A surrogate  
 26 may make a health care decision for a patient who is an adult or a minor who is authorized to consent to  
 27 the provision of health care services under 41-1-402, if the patient has been determined by the primary  
 28 physician or supervising health care provider to lack capacity and an agent or guardian has not been  
 29 designated or appointed or is not reasonably available.

30 (2) An adult, with capacity, or a minor, with capacity who is authorized to consent to the provision



1 of health care services under 41-1-402, may designate any individual to act as surrogate by personally  
2 informing the supervising health care provider. In the absence of a designation or if the designee is not  
3 reasonably available, any member or members of the following classes of the patient's family who are  
4 reasonably available, in descending order of priority, may act as surrogate:

5 (a) the spouse, unless legally separated;

6 (b) an adult child;

7 (c) a parent; or

8 (d) an adult brother or sister.

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

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

14 (5) If more than one member of a class in subsection (2) assumes authority to act as surrogate and  
15 they do not agree on a health care decision and the supervising health care provider is so informed, the  
16 supervising health care provider shall comply with the decision of a majority of the members of that class  
17 who have communicated their views to the supervising health care provider. If the class is evenly divided  
18 concerning the health care decision and the supervising health care provider is so informed, that class and  
19 all individuals having lower priority are disqualified from making the decision.

20 (6) After consultation with the primary physician or supervising health care provider, a surrogate  
21 shall make a health care decision in accordance with the patient's individual instructions, if any, and with  
22 other wishes to the extent known to the surrogate. Otherwise, the surrogate shall make the decision in  
23 accordance with the surrogate's determination of the patient's best interest. In determining the patient's  
24 best interest, the surrogate shall consider the patient's personal values to the extent known to the  
25 surrogate.

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

27 (8) An adult, with capacity, or a minor, with capacity who is authorized to consent to the provision  
28 of health care services under 41-1-402, may at any time disqualify another, including a member of the  
29 individual's family, from acting as the individual's surrogate by a signed writing or by personally informing  
30 the supervising health care provider of the disqualification.

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

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

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

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

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

14  
15 **NEW SECTION. Section 8. Obligations of health care provider.** (1) Unless an individual instruction  
16 expressly directs otherwise, before implementing a health care decision made for a patient, a supervising  
17 health care provider, if possible, shall promptly communicate to the patient the decision made and the  
18 identity of the person making the decision.

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

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

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

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

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

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

11 (6) A health care provider or health care institution may decline to comply with an individual  
12 instruction or health care decision that requires health care contrary to generally accepted health care  
13 standards applicable to the health care provider or health care institution.

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

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

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

19 (c) unless the patient or person then authorized to make health care decisions for the patient  
20 refuses assistance, take all reasonable steps to transfer the patient to another health care provider or health  
21 care institution that is willing to comply with the individual instruction or health care decision. A health  
22 care provider or health care institution may not be required to withhold or withdraw treatment pending the  
23 transfer of a patient if the withholding or withdrawal of treatment is likely to result in a patient's death.

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

26  
27 **NEW SECTION. Section 9. Health care information.** Unless otherwise specified in an advance  
28 health care directive, a person then authorized to make health care decisions for a patient has the same  
29 rights as the patient to request, receive, examine, copy, and consent to the disclosure of medical or any  
30 other health care information.

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

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

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

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

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

14  
15           **NEW SECTION. Section 11. Statutory damages.** (1) A health care provider or health care  
16 institution that intentionally violates [sections 1 through 16] is subject to liability to the aggrieved individual  
17 for damages of \$500 or actual damages resulting from the violation, whichever is greater, plus reasonable  
18 attorney fees.

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

24  
25           **NEW SECTION. Section 12. Capacity.** (1) [Sections 1 through 16] do not affect the right of an  
26 individual to make health care decisions while having capacity to do so.

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

29  
30           **NEW SECTION. Section 13. Effect of copy.** A copy of a written advance health care directive,

1 revocation of an advance health care directive, or designation or disqualification of a surrogate has the  
2 same effect as the original.

3  
4 **NEW SECTION. Section 14. Scope and effect.** (1) [Sections 1 through 16] do not create a  
5 presumption concerning the intention of an individual who has not made or who has revoked an advance  
6 health care directive.

7 (2) Death resulting from the withholding or withdrawal of health care in accordance with [sections  
8 1 through 16] does not for any purpose constitute a suicide or homicide or legally impair or invalidate a  
9 policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or  
10 annuity to the contrary.

11 (3) [Sections 1 through 16] do not authorize mercy killing, assisted suicide, or euthanasia.

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

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

18 (6) [Sections 1 through 16] do not affect other statutes of this state governing treatment for mental  
19 illness of an individual involuntarily committed to a mental health facility under Title 53, chapter 21, part  
20 1.

21  
22 **NEW SECTION. Section 15. Judicial relief.** (1) The district court may enjoin or direct a health care  
23 decision or may order other equitable relief upon the petition of:

- 24 (a) a patient;  
25 (b) the patient's agent, guardian, or surrogate;  
26 (c) a health care provider or health care institution involved with the patient's care; or  
27 (d) an individual described in [section 6(2) or (3)].

28 (2) A proceeding under this section is governed by the provisions of Title 72, chapter 5, part 4.  
29

30 **NEW SECTION. Section 16. Uniformity of application and construction.** [Sections 1 through 16]



1 must be applied and construed to effectuate the general purpose to make uniform the law with respect to  
2 the subject matter of [sections 1 through 16] among states enacting it.

3  
4 **NEW SECTION. Section 17. Effect of previous declaration -- declarations from other states.** (1)

5 An instrument executed prior to [the effective date of this act] that substantially complies with [sections  
6 1 through 16] or that was valid at the time of execution is effective under [sections 1 through 16].

7 (2) A declaration executed in a manner substantially similar to [sections 1 through 16] in another  
8 state and in compliance with the law of that state is effective for the purposes of [sections 1 through 16].

9  
10 **Section 18.** Section 50-10-101, MCA, is amended to read:

11 **"50-10-101. Definitions.** As used in this part, unless the context clearly requires otherwise, the  
12 following definitions apply:

13 (1) ~~"Attending physician" has the meaning provided in 50-9-102.~~ "Advance health care directive"  
14 has the meaning provided in [section 2].

15 (2) "Board" means the state board of medical examiners.

16 (3) "Department" means the department of public health and human services provided for in  
17 2-15-2201.

18 (4) "DNR identification" means a standardized identification card, form, necklace, or bracelet of  
19 uniform size and design, approved by the department, that signifies that:

20 (a) the possessor is a qualified patient, as defined in 50-9-102, has a terminal condition, as  
21 determined by the possessor's primary physician, and the possessor has given an individual instruction  
22 consistent with the withholding or withdrawal of life-sustaining procedures; or

23 (b) that the possessor's attending primary physician has issued a do not resuscitate order for the  
24 possessor and has documented the grounds for the order in the possessor's medical file.

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

27 (6) "Do not resuscitate protocol" means a standardized method of procedure, approved by the  
28 board and adopted in the rules of the department, for the withholding of emergency life-sustaining  
29 procedures by physicians and emergency medical services personnel.

30 (7) "Emergency medical services personnel" ~~has the meaning provided in 50-9-102~~ means paid or

1 volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other  
 2 emergency services personnel acting within the ordinary course of their professions.

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

4 (9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of  
 5 cardiopulmonary resuscitation.

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

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

9 (12) "Terminal condition" has the meaning provided in [section 2]."

10

11 **Section 19.** Section 50-10-103, MCA, is amended to read:

12 **"50-10-103. Adherence to do not resuscitate protocol -- transfer of patients.** (1) Emergency  
 13 medical services personnel other than physicians shall comply with the do not resuscitate protocol when  
 14 presented with ~~either a~~ a do not resuscitate identification, an oral do not resuscitate order issued directly by  
 15 a physician, or a written do not resuscitate order entered on a form prescribed by the department.

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

19

20 **Section 20.** Section 50-10-104, MCA, is amended to read:

21 **"50-10-104. Effect on insurance -- patient's decision.** (1) Death resulting from the withholding or  
 22 withdrawal of emergency life-sustaining procedures pursuant to the do not resuscitate protocol and in  
 23 accordance with this part is not, for any purpose, a suicide or homicide.

24 (2) The possession of DNR identification pursuant to this part does not affect in any manner the  
 25 sale, procurement, or issuance of any policy of life insurance, nor does it modify the terms of an existing  
 26 policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the  
 27 withholding or withdrawal of emergency life-sustaining procedures from an insured person possessing DNR  
 28 identification, notwithstanding any term of the policy to the contrary.

29 (3) A physician, health care facility, or other health care provider and a health care service plan,  
 30 insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan

1 may not require a person to possess DNR identification as a condition for being insured for or receiving  
2 health care services.

3 (4) This part does not create a presumption concerning the intention of an individual who does not  
4 possess DNR identification with respect to the use, withholding, or withdrawal of emergency life-sustaining  
5 procedures.

6 (5) An agent designated to make health care decisions for the principal pursuant to [section 3] or  
7 another person authorized by law to make health care decisions for the patient may request DNR  
8 identification for the patient from the patient's primary physician if the patient is qualified to possess a DNR  
9 identification. Unless contrary to the patient's individual instruction, an agent or other person authorized  
10 by law to make health care decisions for the patient may revoke a do not resuscitate decision. However,  
11 an agent or other person authorized to make health care decisions for the patient may not direct emergency  
12 medical services personnel to provide life-sustaining treatment to a patient possessing DNR identification.

13 ~~(6)~~(6) This part does not increase or decrease the right of a patient to make decisions regarding  
14 the use of emergency life-sustaining procedures if the patient is able to do so, nor does this part impair or  
15 supersede any right or responsibility that a person has to effect the withholding or withdrawal of medical  
16 care in any lawful manner. In that respect, the provisions of this part are cumulative.

17 ~~(6)~~(7) This part does not authorize or approve mercy killing."  
18

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

20 **"52-3-803. Definitions.** As used in this part, the following definitions apply:

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

25 (2) "Exploitation" means the unreasonable use of an older person or a person with a developmental  
26 disability, the person's money, or the person's property to the advantage of another by means of duress,  
27 menace, fraud, misleading or incorrect information knowingly made, or undue influence.

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

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

30 (5) "Mental injury" means an identifiable and substantial impairment of an older person's intellectual

1 or psychological functioning or well-being.

2 (6) "Neglect" means the failure of a guardian; an employee of a public or private residential  
3 institution, facility, home, or agency; or any person legally responsible in a residential setting for the welfare  
4 of an older person or a person with a developmental disability to provide, to the extent of legal  
5 responsibility, food, shelter, clothing, or services necessary to maintain the physical or mental health of the  
6 older person or the person with a developmental disability.

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

11 (8) "Person with a developmental disability" means a person 18 years of age or older who has a  
12 developmental disability, as defined in 53-20-102.

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

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

17

18 **NEW SECTION. Section 22. Repealer.** Sections 50-9-101, 50-9-102, 50-9-103, 50-9-104,  
19 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,  
20 50-9-205, and 50-9-206, MCA, are repealed.

21

22 **NEW SECTION. Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are  
23 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
24 applications, the part remains in effect in all valid applications that are severable from the invalid  
25 applications.

26

-END-