

Act 1448 (Formerly HB 1331) APPROVED: 4/15/1999

Sponsored by: Representative Courtway

For An Act To Be Entitled: "DURABLE POWER OF ATTORNEY FOR HEALTH CARE ACT."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. This act shall be known and may be cited as the "Durable Power of Attorney for Health Care Act".

SECTION 2. The General Assembly recognizes the right of the individual to control all aspects of his or her personal care and medical treatment. However, if the individual becomes incapacitated, his or her right to control treatment may be denied unless the individual, as principal, can delegate the decision-making power to a trusted agent and be sure that the agent's power to make personal and health care decisions for the principal will be effective to the same extent as though made by the principal.

SECTION 3.

(a) A person may execute a power of attorney for health care. Such power of attorney may be durable.

(b) The health care agency shall be:

1. In writing;
2. Signed by the principal, or by someone acting at the direction of the principal and in the principal's presence; and
3. Attested to by, and subscribed in the presence of, two or more competent witnesses who are at least eighteen (18) years of age.

SECTION 4.

(a) For purposes of this act, the term "health care" means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the patient's physical or mental health or personal care.

(b) The term "health care" shall not include decisions concerning life sustaining treatment set forth in Title 20, Chapter 17, Subchapter 2 of the Arkansas Code. However, a power of attorney for health care may contain the declaration set forth in Arkansas Code § 20-17-202 relating to such life sustaining treatments.

SECTION 5. An agent appointed under a power of attorney for health care shall take precedence over any person listed in Arkansas Code § 20-9-602.

SECTION 6. Nothing in this act shall be construed as authorizing or encouraging euthanasia, assisted-suicide, suicide, or any action or course of action that violates the criminal laws of this state or of the United States.

SECTION 7. This act does not in any way affect or invalidate any health care agency executed or any act of an agent prior to July 1, 1999, or affect any claim, right, or remedy that accrued prior to July 1, 1999. Nothing contained herein shall be interpreted or construed to alter or amend any provision of the Arkansas Rights of the Terminally Ill and Permanently Unconscious Act, beginning at Arkansas Code § 20-17-201. The powers of a health care agent may be combined with a declaration made by a qualified patient under the foregoing act.

SECTION 8. This act is wholly independent of the provisions of Title 28 of the Arkansas Code, relating to wills, trusts, and fiduciary relationships, administration of estates, and nothing in this act shall be construed to affect in any way the provisions of said Title 28.

SECTION 9. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 10. If any provision of this act or the application thereof any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 11. All laws and parts of laws in conflict with this act are hereby repealed.