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H.B. No. 4989

A BILL TO BE ENTITLED

AN ACT

relating to the presumption of validity for an advance directive
and permissible forms of a medical power of attorney.

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

SECTION 1. Subchapter A, Chapter 166, Health and Safety
Code, is amended by adding Section 166.012 to read as follows:

Sec. 166.012. PRESUMPTION OF VALIDITY; LIMITATION OF
LIABILITY. (a) In the absence of actual knowledge to the contrary,
a health care provider or residential care provider, as those terms
are defined by Section 166.151, or other person acting as an agent
for or under the provider's control may presume that an advance
directive is valid under this chapter and has been validly executed
by a person authorized to execute the advance directive.

(b) The health care provider, residential care provider, or
other person described by Subsection (a) is not civilly or
criminally liable or subject to review or disciplinary action by
the appropriate licensing authority for following an advance
directive or instructions of an advance directive that the provider
or person presumes is valid under this chapter.

SECTION 2. Subchapter D, Chapter 166, Health and Safety
Code, is amended by adding Section 166.163 to read as follows:

Sec. 166.163. PERMISSIBLE FORMS OF MEDICAL POWER OF
ATTORNEY. (a) A valid medical power of attorney must be in:

(1) a form designated by the executive commissioner in

1 accordance with Subsection (b), provided the document is executed
2 in the manner required by Section 166.154; or

3 (2) the statutory form prescribed by Section 166.164.

4 (b) The executive commissioner by rule shall review and
5 designate documents to be recognized in this state as a written and
6 validly executed medical power of attorney. Any document designated
7 by the executive commissioner must:

8 (1) be promulgated by a national nonprofit
9 organization or the Commission on Law and Aging, American Bar
10 Association;

11 (2) be written in plain language;

12 (3) allow a principal to provide a health care
13 instruction;

14 (4) designate a primary agent who is at least 18 years
15 of age to make health care decisions for the principal when the
16 principal lacks the capacity to make the decisions;

17 (5) allow the principal to name an alternate agent who
18 is at least 18 years of age to make health care decisions for the
19 principal if the primary agent is unable or unwilling to make the
20 decisions;

21 (6) allow the principal to specify or limit the health
22 care decisions an agent may make for the principal;

23 (7) require the principal to:

24 (A) sign and date the medical power of attorney
25 in the presence of two witnesses who qualify under Section 166.003,
26 at least one of whom qualifies under Section 166.003(2); or

27 (B) sign and date the medical power of attorney

1 and have the signature acknowledged before a notary public; and
2 (8) be accepted as a validly executed medical power of
3 attorney in at least 40 other states of the United States.

4 (c) The commission shall post on the commission's Internet
5 website a link to each document designated under Subsection (b).

6 SECTION 3. Section 166.164, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 166.164. STATUTORY [~~FORM OF~~] MEDICAL POWER OF ATTORNEY
9 FORM. A [~~The~~] medical power of attorney may [~~must~~] be in
10 [~~substantially~~] the following form:

11 MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.
12 I, _____ (insert your name) appoint:
13 Name: _____
14 Address: _____
15 Phone: _____

16 as my agent to make any and all health care decisions for me,
17 except to the extent I state otherwise in this document. This
18 medical power of attorney takes effect if I become unable to make my
19 own health care decisions and this fact is certified in writing by
20 my physician.

21 LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE
22 AS FOLLOWS: _____
23 _____

24 DESIGNATION OF ALTERNATE AGENT.
25 (You are not required to designate an alternate agent but you
26 may do so. An alternate agent may make the same health care
27 decisions as the designated agent if the designated agent is unable

1 or unwilling to act as your agent. If the agent designated is your
2 spouse, the designation is automatically revoked by law if your
3 marriage is dissolved, annulled, or declared void unless this
4 document provides otherwise.)

5 If the person designated as my agent is unable or unwilling to
6 make health care decisions for me, I designate the following
7 persons to serve as my agent to make health care decisions for me as
8 authorized by this document, who serve in the following order:

9 A. First Alternate Agent

10 Name: _____

11 Address: _____

12 Phone: _____

13 B. Second Alternate Agent

14 Name: _____

15 Address: _____

16 Phone: _____

17 The original of this document is kept at:

18 _____

19 _____

20 _____

21 The following individuals or institutions have signed
22 copies:

23 Name: _____

24 Address: _____

25 _____

26 Name: _____

27 Address: _____

1 _____

2 DURATION.

3 I understand that this power of attorney exists indefinitely
4 from the date I execute this document unless I establish a shorter
5 time or revoke the power of attorney. If I am unable to make health
6 care decisions for myself when this power of attorney expires, the
7 authority I have granted my agent continues to exist until the time
8 I become able to make health care decisions for myself.

9 (IF APPLICABLE) This power of attorney ends on the following
10 date: _____

11 PRIOR DESIGNATIONS REVOKED.

12 I revoke any prior medical power of attorney.

13 DISCLOSURE STATEMENT.

14 THIS MEDICAL POWER OF ATTORNEY IS AN IMPORTANT LEGAL
15 DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE
16 IMPORTANT FACTS:

17 Except to the extent you state otherwise, this document gives
18 the person you name as your agent the authority to make any and all
19 health care decisions for you in accordance with your wishes,
20 including your religious and moral beliefs, when you are unable to
21 make the decisions for yourself. Because "health care" means any
22 treatment, service, or procedure to maintain, diagnose, or treat
23 your physical or mental condition, your agent has the power to make
24 a broad range of health care decisions for you. Your agent may
25 consent, refuse to consent, or withdraw consent to medical
26 treatment and may make decisions about withdrawing or withholding
27 life-sustaining treatment. Your agent may not consent to

1 voluntary inpatient mental health services, convulsive treatment,
2 psychosurgery, or abortion. A physician must comply with your
3 agent's instructions or allow you to be transferred to another
4 physician.

5 Your agent's authority is effective when your doctor
6 certifies that you lack the competence to make health care
7 decisions.

8 Your agent is obligated to follow your instructions when
9 making decisions on your behalf. Unless you state otherwise, your
10 agent has the same authority to make decisions about your health
11 care as you would have if you were able to make health care
12 decisions for yourself.

13 It is important that you discuss this document with your
14 physician or other health care provider before you sign the
15 document to ensure that you understand the nature and range of
16 decisions that may be made on your behalf. If you do not have a
17 physician, you should talk with someone else who is knowledgeable
18 about these issues and can answer your questions. You do not need a
19 lawyer's assistance to complete this document, but if there is
20 anything in this document that you do not understand, you should ask
21 a lawyer to explain it to you.

22 The person you appoint as agent should be someone you know and
23 trust. The person must be 18 years of age or older or a person
24 under 18 years of age who has had the disabilities of minority
25 removed. If you appoint your health or residential care provider
26 (e.g., your physician or an employee of a home health agency,
27 hospital, nursing facility, or residential care facility, other

1 than a relative), that person has to choose between acting as your
2 agent or as your health or residential care provider; the law does
3 not allow a person to serve as both at the same time.

4 You should inform the person you appoint that you want the
5 person to be your health care agent. You should discuss this
6 document with your agent and your physician and give each a signed
7 copy. You should indicate on the document itself the people and
8 institutions that you intend to have signed copies. Your agent is
9 not liable for health care decisions made in good faith on your
10 behalf.

11 Once you have signed this document, you have the right to make
12 health care decisions for yourself as long as you are able to make
13 those decisions, and treatment cannot be given to you or stopped
14 over your objection. You have the right to revoke the authority
15 granted to your agent by informing your agent or your health or
16 residential care provider orally or in writing or by your execution
17 of a subsequent medical power of attorney. Unless you state
18 otherwise in this document, your appointment of a spouse is revoked
19 if your marriage is dissolved, annulled, or declared void.

20 This document may not be changed or modified. If you want to
21 make changes in this document, you must execute a new medical power
22 of attorney.

23 You may wish to designate an alternate agent in the event that
24 your agent is unwilling, unable, or ineligible to act as your
25 agent. If you designate an alternate agent, the alternate agent
26 has the same authority as the agent to make health care decisions
27 for you.

1 THIS POWER OF ATTORNEY IS NOT VALID UNLESS:

2 (1) YOU SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED
3 BEFORE A NOTARY PUBLIC; OR

4 (2) YOU SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT
5 WITNESSES.

6 THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

7 (1) the person you have designated as your agent;

8 (2) a person related to you by blood or marriage;

9 (3) a person entitled to any part of your estate after
10 your death under a will or codicil executed by you or by operation
11 of law;

12 (4) your attending physician;

13 (5) an employee of your attending physician;

14 (6) an employee of a health care facility in which you
15 are a patient if the employee is providing direct patient care to
16 you or is an officer, director, partner, or business office
17 employee of the health care facility or of any parent organization
18 of the health care facility; or

19 (7) a person who, at the time this medical power of
20 attorney is executed, has a claim against any part of your estate
21 after your death.

22 By signing below, I acknowledge that I have read and
23 understand the information contained in the above disclosure
24 statement.

25 (YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. YOU MAY SIGN
26 IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR
27 YOU MAY SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.)

1 SIGNATURE ACKNOWLEDGED BEFORE NOTARY

2 I sign my name to this medical power of attorney on _____

3 day of _____ (month, year) at

4 _____

5 (City and State)

6 _____

7 (Signature)

8 _____

9 (Print Name)

10 State of Texas

11 County of _____

12 This instrument was acknowledged before me on _____ (date) by

13 _____ (name of person acknowledging).

14 _____

15 NOTARY PUBLIC, State of Texas

16 Notary's printed name:

17 _____

18 My commission expires:

19 _____

20 OR

21 SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

22 I sign my name to this medical power of attorney on _____

23 day of _____ (month, year) at

24 _____

25 (City and State)

26 _____

27 (Signature)

1 _____

2 (Print Name)

3 STATEMENT OF FIRST WITNESS.

4 I am not the person appointed as agent by this document. I am
5 not related to the principal by blood or marriage. I would not be
6 entitled to any portion of the principal's estate on the principal's
7 death. I am not the attending physician of the principal or an
8 employee of the attending physician. I have no claim against any
9 portion of the principal's estate on the principal's
10 death. Furthermore, if I am an employee of a health care facility
11 in which the principal is a patient, I am not involved in providing
12 direct patient care to the principal and am not an officer,
13 director, partner, or business office employee of the health care
14 facility or of any parent organization of the health care facility.

15 Signature: _____

16 Print Name: _____ Date: _____

17 Address: _____

18 SIGNATURE OF SECOND WITNESS.

19 Signature: _____

20 Print Name: _____ Date: _____

21 Address: _____

22 SECTION 4. Not later than December 1, 2023, the executive
23 commissioner of the Health and Human Services Commission shall by
24 rule designate a document as required by Section 166.163, Health
25 and Safety Code, as added by this Act.

26 SECTION 5. Section 166.163, Health and Safety Code, as
27 added by this Act, and Section 166.164, Health and Safety Code, as

1 amended by this Act, apply only to a medical power of attorney
2 executed on or after the effective date of this Act. A medical
3 power of attorney executed before the effective date of this Act is
4 governed by the law in effect immediately before the effective date
5 of this Act, and the former law is continued in effect for that
6 purpose.

7 SECTION 6. This Act takes effect September 1, 2023.