By: Bhojani H.B. No. 1163

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 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 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 the executive commissioner designates in

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

(2) the statutory form prescribed by Section 166.164.

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

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

(2) be written in plain language;

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

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

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

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

(7) require the principal to:

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

(B) sign and date the medical power of attorney

and have the signature acknowledged before a notary public; and

(8) be accepted as a validly executed medical power of attorney in at least 40 other states of the United States.

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

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

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

MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.

I, _____ (insert your name) appoint:

Name:_____

Address:_____

Phone:

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

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

_____

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable

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

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

A. First Alternate Agent

Name:_____

Address:_____

Phone:

B. Second Alternate Agent

Name:_____

Address:_____

Phone:

The original of this document is kept at:

_____

_____

_____

The following individuals or institutions have signed copies:

Name:_____

Address:_____

_____

Name:_____

Address:_____

_____

DURATION.

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

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

PRIOR DESIGNATIONS REVOKED.

I revoke any prior medical power of attorney.

DISCLOSURE STATEMENT.

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

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

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

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

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

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

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

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

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

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

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

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

THIS POWER OF ATTORNEY IS NOT VALID UNLESS:

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

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

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

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

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

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

(4) your attending physician;

(5) an employee of your attending physician;

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

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

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

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

SIGNATURE ACKNOWLEDGED BEFORE NOTARY

I sign my name to this medical power of attorney on _____ day of _____ (month, year) at

_____

(City and State)

_____

(Signature)

_____

(Print Name)

State of Texas

County of _____

This instrument was acknowledged before me on _____ (date) by _____ (name of person acknowledging).

_____

NOTARY PUBLIC, State of Texas

Notary's printed name:

_____

My commission expires:

_____

OR

SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

I sign my name to this medical power of attorney on _____ day of _____ (month, year) at

_____

(City and State)

_____

(Signature)

_____

(Print Name)

STATEMENT OF FIRST WITNESS.

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

Signature:_____

Print Name:_____ Date:_____

Address:_____

SIGNATURE OF SECOND WITNESS.

Signature:_____

Print Name:_____ Date:_____

Address:_____

SECTION 4. Not later than December 1, 2027, the executive commissioner of the Health and Human Services Commission shall by rule designate at least one document as required by Section 166.163, Health and Safety Code, as added by this Act.

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

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

SECTION 6. This Act takes effect September 1, 2027.