

Advance Health-Care Directive (DE)

TODD A. FLUBACHER AND J. ZACHARY HAUPT, MORRIS, NICHOLS, ARSHT & TUNNELL LLP,
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An advance health-care directive, under Delaware law. Competent adult individuals can use this Standard Document to provide advance written directions concerning health-care decisions and to authorize an agent to make health-care decisions for the individual. The individual may provide the agent with personal instructions that express preferences regarding health-care treatments. These instructions may include directives for the withholding or withdrawing of life-sustaining treatments. This Standard Document contains integrated notes and drafting tips.

DRAFTING NOTE: READ THIS BEFORE USING DOCUMENT

In Delaware, a competent adult (declarant) may create an advance health-care directive to:

- Give advance written direction concerning health-care decisions (referred to as an individual instruction) for the declarant. The individual instruction allows a declarant to express desires regarding the health care that the declarant wants to receive if the declarant becomes incapacitated.
- Designate an agent to make health-care decisions for the declarant when the declarant no longer has capacity to make those decisions (referred to as a power of attorney for health care). This designation helps the declarant maintain control over health-care decisions if the declarant becomes incapacitated by appointing a trusted individual to carry out the

declarant's health-care preferences. If the declarant designates an agent and becomes incapacitated, health-care providers look to the designated agent for authorization and consent to medical procedures and courses of treatment as they look to a declarant with capacity.

In Delaware, an individual instruction, a power of attorney for health-care, or a document combining the two is referred to as an advance health-care directive (16 Del. C. §§ 2501 and 2503.)

This Standard Document refers to the:

- Individual making the advance health-care directive as the declarant.
- Appointed third party as the agent.

Delaware statute hyphenates health-care when referring to, among other things, the

advance health-care directive and health-care decision making, but not in certain other contexts, including for a power of attorney for health care. Therefore, this Standard Document hyphenates the term health-care or does not hyphenate it accordingly.

STATUTORY FORM

This Standard Document uses Delaware's statutory form language and format to create an advance health-care directive (16 Del. C. § 2505). The declarant is not required to use the statutory form or any other specific document as an advance health-care directive. It is generally advisable, however, to use the statutory form whenever possible because local health-care providers and institutions are familiar with it.

There are generally four parts to a Delaware statutory advance health-care directive:

- Part 1: Power of Attorney for Health Care.
- Part 2: Instructions for Health Care
- Part 3: Anatomical Gifts at Death.
- Part 4: Primary Physician.

(16 Del. C. § 2505.)

A declarant may complete any or all the parts of the form and may modify the form to accomplish the declarant's objectives (16 Del. C. § 2505). Counsel should generally advise the declarant to complete all four parts to ensure that the declarant's preferences on all these matters are clearly expressed and that the declarant's wishes are represented as fully as possible in the health-care decision-making process.

The declarant must also pay close attention to the execution formalities and witness requirements that apply

for advance health-care directives in Delaware. For example, there is an additional requirement that one of the witnesses be a patient advocate or ombudsperson if the declarant is a resident in a long-term care facility (16 Del. C. § 2511 and see Drafting Note, Additional Requirement for Witness if Declarant is in Long-Term Care Facility).

For more information about the execution of advance health-care directives, see Drafting Note, Signatures of Principal and Witnesses.

CAPACITY TO EXECUTE AN ADVANCE HEALTH-CARE DIRECTIVE

Any mentally competent adult may execute an advance health-care directive (16 Del. C. § 2503(a)(2)). An individual is presumed to have capacity to make a health-care decision and to create or revoke an advance health-care directive (16 Del. C. § 2514(b)). The Delaware Code does not define the term mentally competent. However, the Delaware Code provides that capacity to make a health-care decision requires the ability to:

- Understand the significant benefits, risks, and alternatives to proposed health care.
- Make and communicate a health-care decision.

(16 Del. C. § 2501(d).) For more information on determining capacity to make health-care decisions, see Drafting Note, Determining Capacity to Make Health-Care Decisions.

Counsel should discuss these factors with the client to determine that the client has capacity at the time that the client makes the advance health-care directive and should document the client's responses.

ADVANCE HEALTH-CARE DIRECTIVE

(16 Del. C. § 2505)

EXPLANATION

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

Part 1 of this form is a power of attorney for health care. Part 1 lets you name another individual as agent to make health-care decisions for you if you become incapable of making your own decisions. You may also name an alternate agent to act for you if your first choice is not willing, able or reasonably available to make decisions for you. Unless related to you, an agent may not have a controlling interest in or be an operator or employee of a residential long-term health-care institution at which you are receiving care.

If you do not have a qualifying condition (terminal illness/injury or permanent unconsciousness), your agent may make all health-care decisions for you except for decisions providing, withholding or withdrawing of a life sustaining procedure. Unless you limit the agent's authority, your agent will have the right to:

- (a) Consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition unless it's a life-sustaining procedure or otherwise required by law.
- (b) Select or discharge health-care providers and health-care institutions;

If you have a qualifying condition, your agent may make all health-care decisions for you, including, but not limited to:

- (c) The decisions listed in (a) and (b).
- (d) Consent or refuse consent to life-sustaining procedures, such as, but not limited to, cardiopulmonary resuscitation and orders not to resuscitate.
- (e) Direct the providing, withholding or withdrawal of artificial nutrition and hydration and all other forms of health-care.

Part 2 of this form lets you give specific instructions about any aspect of your health care. Choices are provided for you to express your wishes regarding the provision, withholding or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration as well as the provision of pain relief. Space is also provided for you to add to the choices you have made or for you to write out any additional instructions for other than end of life decisions.

Part 3 of this form lets you express an intention to donate your bodily organs and tissues following your death.

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

After completing this form, sign and date the form at the end. It is required that 2 other individuals sign as witnesses. Give a copy of the signed and completed form to your physician, to any other health-care providers you may have, to any health-care institution at which you are receiving care and to any health-care agents you have named. You should talk to the person you have named as agent to make sure that the person understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health-care directive or replace this form at any time.

DRAFTING NOTE: EXPLANATION OF ADVANCE HEALTH-CARE DIRECTIVE

This section of the statutory form includes helpful instructions for a declarant to draft the advance health-care directive. These instructions may not be necessary when a declarant is completing the form with assistance from counsel, as counsel can explain the different sections of the form and how they work. However, there is no

harm in including the statutory instruction language for the declarant's reference and including it may be useful evidence that the declarant understood the declarant's rights and the purpose of the advance health-care directive when the declarant executed the document.

These instructions also advise the declarant of the declarant's right to revoke the advance health-care directive.

REVOCAION OF ADVANCE HEALTH-CARE DIRECTIVE

The declarant may revoke all or any part of an advance health-care directive, including

the designation of an agent, at any time if the declarant is mentally competent either:

- By a signed writing.
- In a manner that communicates an intent to revoke and in the presence of two competent persons, one of which is a health-care provider.

(16 Del. C. § 2504.)

PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1) DESIGNATION OF AGENT: I designate the following individual as my agent to make health-care decisions for me:

Name: [AGENT NAME]
 Address: [ADDRESS]
 [CITY], [STATE] [ZIP CODE]
 Phone: [HOME PHONE] [WORK PHONE]

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

Name: [FIRST ALTERNATE AGENT NAME]
 Address: [ADDRESS]
 [CITY], [STATE] [ZIP CODE]
 Phone: [HOME PHONE] [WORK PHONE]

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

Name: [SECOND ALTERNATE AGENT NAME]
 Address: [ADDRESS]
 [CITY], [STATE] [ZIP CODE]
 Phone: [HOME PHONE] [WORK PHONE]

DRAFTING NOTE: DESIGNATION OF AGENT

The declarant should choose a trusted and competent person to serve as the agent.

The agent should:

- Agree to act as agent.

- Know and respect the declarant's personal, philosophical, religious, and ethical values.

- Be willing to act according to the declarant's preferences.

- Live close to the declarant if possible. The agent should be available and accessible if the declarant cannot make health-care decisions.
- Be able to act calmly under pressure, often with limited information.
- Be able to handle potential family conflicts regarding declarant's wishes.

Counsel should recommend that the declarant discuss this role with the potential agent before executing the advance health-care directive so that the agent understands and is comfortable with the declarant's health-care desires. The Delaware statutes refer exclusively to the agent in the singular. The declarant should not attempt to name more than one agent to serve as co-agents at any time.

DESIGNATING ALTERNATE AGENTS

The declarant should designate alternate agents to serve if the primary named agent is not available or able to make health-care decisions. It is common to include more than one alternate agent in case both the primary agent and the first alternate cannot act. If there is no designated agent available to act, the declarant may require a guardian, conservator, or surrogate.

For more information on guardians, see Drafting Note, Nomination of Guardian.

Surrogates

A surrogate is an individual able to make a health-care decision for an adult patient if the patient lacks capacity and there is no agent or guardian or if the patient's advance health-care directive does not address a specific issue (16 Del. C. § 2507(a)).

There is no required court process to appoint a surrogate. Any mentally-competent patient may designate any individual to

act as a surrogate by personally informing the supervising health-care provider in the presence of a witness who is not the surrogate (16 Del. C. § 2507(b)). The supervising health-care provider must designate the surrogate in writing in the patient's medical record and the witness must sign the designation.

If the patient did not make a surrogate designation or the designee is not available, any reasonably available member of the following classes of the patient's family may act as surrogate in the following priority:

- The spouse, unless a petition for divorce was filed.
- An adult child.
- A parent.
- An adult sibling.
- An adult grandchild.
- An adult niece or nephew.
- An adult aunt or uncle.

(16 Del. C. § 2507(b)(2).)

A surrogate is frequently a short-term solution that enables decisions to be made in emergent situations. If a patient is likely to be incapacitated for an extended time, it is generally preferable to seek the appointment of a guardian of the person vested by the court with all powers necessary to protect, manage, and care for the person (12 Del. C. § 3901).

LIMITATIONS ON WHICH PARTY MAY SERVE AS HEALTH-CARE AGENT

Unless related to the declarant by blood, marriage or adoption, an agent may not have a controlling interest in or be an operator or employee of a residential long-term health-care institution at which the declarant is receiving care (16 Del. C. § 2503(h)).

(2) AGENT'S AUTHORITY: If I am not in a qualifying condition my agent is authorized to make all health-care decisions for me, except decisions about life-sustaining procedures and as I state here; and if I am in a qualifying condition, my agent is authorized to make all health-care decisions for me, except as I state here:

(Add additional sheets if necessary.)

DRAFTING NOTE: AGENT'S AUTHORITY

An agent has no authority to act under an advance health-care directive generally until the declarant becomes incapacitated (16 Del. C. §2503(c) and see Drafting Note, When Agent's Authority Becomes Effective). When a declarant is incapacitated, an agent's authority under this Standard Document differs depending on the declarant is in a qualifying condition.

QUALIFYING CONDITION

A declarant is in a qualifying condition when the declarant has at least one of the following conditions and the attending physician and another physician certifies the condition in writing in the patient's medical record:

- **Permanently unconscious or permanent unconsciousness.** Any medical condition that:
 - existed for at least four weeks; and
 - was diagnosed under currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment.
- Permanently unconscious or permanent unconsciousness includes a persistent vegetative state or irreversible coma. The second certifying physician for this condition must be a board-certified neurologist or neurosurgeon.
- **Terminal condition.** Any disease, illness, or condition:
 - for which there is no reasonable medical expectation of recovery; and
 - which, as a medical probability, results in the death of that human being regardless of the use or discontinuance of medical treatment implemented for sustaining life or the life processes.
- **Serious illness or frailty.** A condition where the health-care practitioner would not be surprised if the patient died within the next year.

(16 Del. C. § 2501(r).)

When Declarant Does Not Have Qualifying Condition

If the declarant does not have a qualifying condition, the agent may make all

health-care decisions for the declarant except for decisions providing, withholding, or withdrawing a life-sustaining procedure. The declarant can limit this authority, but absent any limitations in this section, the agent can:

- Consent or refuse consent to any care, treatment, service or procedure to maintain, diagnose or otherwise affect a physical or mental condition.
- Select or discharge health-care providers and health-care institutions.

(16 Del. C. §§ 2503(c) and 2505.)

When Declarant Has Qualifying Condition

If the declarant has a qualifying condition, unless otherwise stated in the advance health-care directive, the agent may:

- Make all health-care decisions for the declarant that the agent may make if the declarant were not in a qualifying condition.
- Consent or refuse consent to life-sustaining procedures, such as cardiopulmonary resuscitation and orders not to resuscitate.
- Direct the providing, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care.

(16 Del. C. §§ 2503(c) and 2505.)

AGENT'S POWERS

Unless the declarant specifies otherwise in the advance health-care directive:

- The declarant authorizes the agent to make all health-care decisions allowed under law. If the declarant has specific preferences regarding health-care decisions, it is generally best to express those preferences both here and in Part 2, Instructions for Health Care. If the declarant expresses the declarant's preferences in both places, the declarant can be confident that the declarant's preferences can be known and fulfilled without regard to whether the appointed agent is living, available, and willing to act at the time that decisions regarding the declarant's care are made. Though

the declarant can include in this section express limitations on the agent's authority, including them is generally not recommended (see Drafting Note, Specific Limiting Language Generally Disfavored).

- The agent has the same rights as the declarant to request, receive, examine, copy, and consent to the disclosure of medical or other health-care information (16 Del. C. § 2509).

The declarant's directions and restrictions can cover all medical care including whether to resuscitate the declarant and withhold or withdraw life-sustaining treatments. If desired, counsel should help the declarant write specific directions consistent with the declarant's preferences.

SPECIFIC LIMITING LANGUAGE GENERALLY DISFAVORED

Counsel should generally advise against including specific limiting language or directions in this section unless the declarant has a strong, reasonable desire for these limitations. This is most often the case where end of life decisions are involved. Usually the language in section

entitled PART 2, is sufficient to address the declarant's main health-care decision concerns without the need to restrict the agent's authority to act. Sometimes, however, the declarant wants to include more specific direction or limitations.

Counsel should take care to assist the declarant when including specific, personalized instructions and restrictions in this section. It is difficult to predict health circumstances, issues that may exist later in life, and advancements in medicine and technology. Therefore, it is generally not advisable to restrict the ability of an agent to authorize certain types of health-care decisions. It is preferable for the declarant to ensure the agent understands the declarant's preferences, but still permit the agent the discretion to act with broad powers under the document. That way, the agent has the most flexibility in dealing with unanticipated circumstances and no health-care options are foreclosed.

Counsel should ensure that any directions or limitations the declarant includes in this section are consistent with the declarant's directions elsewhere in the advance health-care directive.

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE: My agent's authority becomes effective when my primary physician determines I lack the capacity to make my own health-care decisions. As to decisions concerning the providing, withholding and withdrawal of life-sustaining procedures my agent's authority becomes effective when my primary physician determines I lack the capacity to make my own health-care decisions and my primary physician and another physician determine I am in a terminal condition or permanently unconscious.

DRAFTING NOTE: WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE

The agent may not make health-care decisions for the declarant unless a determination is made that the declarant lacks the capacity to make those decisions (16 Del. C. § 2503(c)).

DETERMINING CAPACITY TO MAKE HEALTH-CARE DECISIONS

After executing the advance health-care directive, the declarant continues to make the

declarant's own health-care decisions while having capacity to do so (16 Del. C. § 2514(a)). A determination that an individual lacks or recovers capacity must be made by either:

- The primary physician. For more information on the designation of a primary physician, see Drafting Note, Primary Physician.
- Another physician specified in a written advance health-care directive.

- A person (other than a physician) designated by the declarant to certify in a notarized document that the individual lacks or has recovered capacity.

(16 Del. C. § 2503(e).) For information on capacity to execute an advance health-care directive, see Drafting Note, Capacity to Execute an Advance Health-Care Directive.

The declarant's primary physician and at least one other physician must make the determination that a declarant is in a qualifying condition, which determines the scope of the agent's authority to make certain health-care decisions for the principal (16 Del. C. § 2501(r) and see Drafting Note, Qualifying Condition).

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

DRAFTING NOTE: AGENT'S OBLIGATION

An agent may only make a health-care decision for the declarant:

- After consultation with the physician or other person designated to determine the declarant's capacity.
- Under the declarant's individual instructions, if any, and other wishes to the extent known to the agent.

(16 Del. C. § 2503(f).)

If the declarant's instructions or desires are not known or clearly applicable, the agent's decision must conform as closely as possible to what the declarant was likely to have done or intended under the circumstances. To the extent that the agent knows or can determine, the agent must consider factors, including, but not limited to:

- The declarant's:
 - personal, philosophical, religious and ethical values;
 - likelihood of regaining decision-making capacity; and
 - likelihood of death.

- The treatment's burdens on and benefits to the declarant.

- Reliable oral or written statements previously made by the declarant, including statements made to family members, friends, health-care providers or religious leaders.

(16 Del. C. § 2503(f).)

If the agent cannot determine what the declarant was likely to have done or intended under the circumstances, the agent must make health-care decisions in the declarant's best interest (16 Del. C. § 2503(f)).

If the declarant has strong beliefs, views, or objectives, counsel should encourage the declarant to inform the agent to ensure that those beliefs, views, or objectives are considered as part of the agent's decision-making process. The declarant may wish to add specific language to the advance health-care directive, but this is generally disfavored (see Drafting Note, Specific Limiting Language Generally Disfavored).

(5) NOMINATION OF GUARDIAN: If a guardian of my person needs to be appointed for me by a court, (please check one):

I nominate the agent(s) whom I named in this form in the order designated to act as guardian.

I nominate the following to be guardian in the order designated:

I do not nominate anyone to be guardian.

DRAFTING NOTE: NOMINATION OF GUARDIAN

An advance health-care directive may include a declarant's nomination of a guardian of the person, in case the court needs to appoint that person (16 Del. C. § 2503(i)). The declarant should consider nominating a guardian of the person should the need arise. A guardian of the person possesses the powers, rights, and duties deemed by the court to be necessary to protect, manage, and care for the person with a disability (12 Del. C. § 3922(a)).

A guardian of the person for a disabled adult generally makes decisions about the disabled adult's personal care and daily needs, such as decisions related to where the disabled adult is to reside and admission to a nursing home or other treatment facility (12 Del. C. § 3922(b)). A guardian of the person is often vested with broader power than an agent under an advance health-care directive or a surrogate, who are charged exclusively

with making health-care decisions for the declarant.

Because they serve similar functions, the declarant typically requests that the agent appointed in the advance health-care directive be appointed as guardian of the person, but that is not always the case.

Counsel should ensure any guardian of the person nomination made in this Standard Document is consistent with nominations made elsewhere in the client's estate planning documents. A guardian of the person is often, but not always, appointed also as the guardian of the incapacitated adult's property, who is a person making decisions about the adult's financial matters (12 Del. C. § 3923). However, a declarant does not make the designation of a guardian of the property in the advance health-care directive, but rather in a durable personal power of attorney.

PART 2

INSTRUCTIONS FOR HEALTH CARE

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

(6) END-OF-LIFE DECISIONS: If I am in a qualifying condition, I direct that my health-care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below:

Choice Not To Prolong Life

I do not want my life to be prolonged if: (please check all that apply)

____ (i) I have a terminal condition (an incurable condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, makes death imminent and from which, despite the application of life-sustaining procedures, there can be no recovery) and regarding artificial nutrition and hydration,

I make the following specific directions:	I want used	I do not want used
Artificial nutrition through a conduit	_____	_____
Hydration through a conduit	_____	_____

____ (ii) I become permanently unconscious (a medical condition that has been diagnosed in accordance with currently accepted medical standards that has lasted at least 4 weeks and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, a persistent vegetative state or irreversible coma) and regarding artificial nutrition and hydration,

I make the following specific directions:	I want used	I do not want used
Artificial nutrition through a conduit	_____	_____
Hydration through a conduit	_____	_____

Choice To Prolong Life

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

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

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

(Add additional sheets if necessary.)

DRAFTING NOTE: INSTRUCTIONS FOR HEALTH CARE

These sections provide for declarant’s instructions regarding end-of-life care including:

- Whether to prolong life.
- Relief from pain.

Counsel and declarant should discuss the declarant’s desires regarding these matters and counsel should ensure that declarant completes this section of the advance health-care directive as the declarant desires.

If the declarant chooses to complete this Part 2, the declarant should complete either, but not both of:

- Choice Not To Prolong Life.
- Choice To Prolong Life.

Out of an abundance of caution, the declarant may wish to strike through the undesired section. When completing this part of the form, the declarant may strike any wording that does not express the declarant’s wishes.

If the declarant wants to defer to the agent's decisions regarding these matters, the declarant should leave Part 2 blank.

If the declarant wants to provide specific, customized instructions regarding end-of-life decisions, the declarant should do so in Section (7). These instructions may limit the agent's authority to make certain health-care decisions and may provide specific instructions regarding how to make decisions. Counsel should closely assist the declarant in drafting these instructions, if any.

SERIOUS ILLNESS OR FRAILITY

The definition of qualifying condition includes a serious illness or frailty, which is a condition where the health-care practitioner is not surprised if the patient died within the next year (16 Del. C. § 2501(r)(3) and see Drafting Note, Qualifying Condition). However, Part 2 of the Delaware statutory form is not modified to include a section

for a declarant to elect whether they desire to use artificial nutrition or hydration if a serious illness or frailty occurs. Counsel should consider modifying the statutory form to account for this statutorily permitted election. Related sample language that the declarant may insert as clause (iii) under the "Choice Not to Prolong Life" section is:

"____ (iii) I have a serious illness or frailty (a condition based on which the health-care practitioner would not be surprised if the patient died within the next year) and regarding artificial nutrition and hydration:

I make the	I want used	I do not want
following specific		used
directions:		

Artificial nutrition		
through a conduit	_____	_____

Hydration		
through a conduit	_____	_____"

PART 3

ANATOMICAL GIFTS AT DEATH

(OPTIONAL)

(8) I am mentally competent and 18 years or more of age.

I hereby make this anatomical gift to take effect upon my death. The marks in the appropriate squares and words filled into the blanks below indicate my desires.

I give: my body; any needed organs or parts; the following organs or parts;

To the following person or institutions the physician in attendance at my death; the hospital in which I die; the following named physician, hospital, storage bank or other medical institution; the following individual for treatment; for the following purposes: any purpose authorized by law; transplantation; therapy; research; medical education.

DRAFTING NOTE: ANATOMICAL GIFTS AT DEATH

Delaware statutes govern donation of organs at death (anatomical gifts) (16 Del. C. §§ 2710 to 2731). The advance health-care directive is one way a prospective donor may make an anatomical gift. Donors may also make anatomical gifts:

- In a will.
 - By statement or symbol in a donor registry.
 - On the donor's driver's license or identification card.
- (16 Del. C. § 2713.)

An anatomical gift becomes effective on a donor's death. The donor may amend or revoke an anatomical give during the donor's lifetime (16 Del. C. § 2715). If the document evidencing the donor's anatomical gift was delivered to a specified donee, the donor may amend or revoke the gift by either:

- The execution and delivery to the donee of a signed statement.
- An oral statement made in the presence of two persons and communicated to the donee.
- A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee.
- A signed card or document found on the person or in the person's effects.

(16 Del. C. § 2715(a).)

If the document evidencing the donor's anatomical gift was not delivered to the donee, the donor may revoke the gift in the same manner as if delivered to a donee or alternatively by destruction, cancellation, or mutilation of the document and all executed copies of the document (16 Del. C. § 2715(b)).

If the declarant includes directions regarding anatomical gifts in more than one document, counsel should advise the declarant to ensure all anatomical gift documents are consistent to avoid confusion and delay. Counsel should also advise the declarant that information entered into the Donate Life Delaware Registry supersedes prior conflicting information on an advance health-care directive or the donor's driver's license or identification card (16 Del. C. § 2723).

PART 4

PRIMARY PHYSICIAN

(OPTIONAL)

(9) I designate the following physician as my primary physician:

[PHYSICIAN NAME]

[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 primary physician:

[PHYSICIAN NAME]

[ADDRESS, CITY, STATE, ZIP CODE]

[PHONE]

Primary Physician shall mean a physician designated by an individual or the individual's agent or guardian, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility.

DRAFTING NOTE: PRIMARY PHYSICIAN

Under Delaware law, a primary physician or attending physician must determine whether a declarant is incapacitated to enable the agent to make health-care decisions for the principal (16 Del. C. §§ 2501(q) and 2503(e) and see Drafting Note, When Agent's Authority Becomes Effective).

Primary physician or attending physician means a physician designated to have

primary responsibility for the individual's health-care by either:

- The declarant.
- The declarant's agent, surrogate, or guardian.

If no primary physician is appointed or if the designated physician cannot or refuses to act as primary physician, the role is filled by a physician undertaking the responsibility. (16 Del. C. § 2501(q).)

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

(11) SIGNATURE: Sign and date the form here: I understand the purpose and effect of this document.

(date)

(sign your name)

(address)

(print your name)

(city, state, zip code)

(12) SIGNATURE OF WITNESSES:

Statement of Witnesses

SIGNED AND DECLARED by the above-named declarant as and for the declarant's written declaration under 16 Del. C. §§ 2502 and 2503, in our presence, who in the declarant's presence, at the declarant's request, and in the presence of each other, have hereunto subscribed our names as witnesses, and state:

A. That the Declarant is mentally competent.

B. That neither of them:

1. Is related to the declarant by blood, marriage or adoption;
2. Is entitled to any portion of the estate of the declarant under any will of the declarant or codicil thereto then existing nor, at the time of the executing of the advance health-care directive, is so entitled by operation of law then existing;
3. Has, at the time of the execution of the advance health-care directive, a present or inchoate claim against any portion of the estate of the declarant;
4. Has a direct financial responsibility for the declarant's medical care;
5. Has a controlling interest in or is an operator or an employee of a residential long-term health-care institution in which the declarant is a resident; or
6. Is under eighteen years of age.

C. That if the declarant is a resident of a sanitarium, rest home, nursing home, boarding home or related institution, one of the witnesses, , is at the time of the execution of the advance health-care directive, a patient advocate or ombudsman designated by the Division of Services for Aging and Adults with Physical Disabilities or the Public Guardian.

(print name)

(address) (city, state, zip code)

(signature of witness)

(date)

I am not prohibited by § 2503 of Title 16 of the Delaware Code from being a witness.

(print name)

(address) (city, state, zip code)

(signature of witness)

(date)

I am not prohibited by § 2503 of Title 16 of the Delaware Code from being a witness.

DRAFTING NOTE: SIGNATURES OF PRINCIPAL AND WITNESSES

An advance health-care directive must be:

- In writing.
- Dated.
- Signed:
 - by the declarant or by another person in the declarant’s presence and at the declarant’s expressed direction; and
 - in the presence of two or more qualifying adult witnesses.

(16 Del. C. § 2503(b)(1).)

WITNESSES

Neither witness may:

- Be related to the declarant by blood, marriage or adoption.
- Be entitled to any portion of the estate of the declarant under the declarant’s

will or trust or by operation of law when the advance health-care directive is executed.

- Have, at the time of the execution of the advance health-care directive, a present or inchoate claim against any portion of the declarant’s estate.
- Have a direct financial responsibility for the declarant’s medical care.
- Have a controlling interest in or be an operator or an employee of a health-care institution at which the declarant is a patient or resident.

(16 Del. C. § 2503(b)(1)(d).)

Each witness must state in writing that the witness is not prohibited from being a witness under these rules (16 Del. C. § 2503(b)(2)).

ADDITIONAL REQUIREMENT FOR WITNESS IF DECLARANT IS IN LONG-TERM CARE FACILITY

If the declarant is a patient in a long-term care facility at the time that the advance health-care directive is executed, the advance health-care directive is invalid

unless one of the witnesses is a person designated as a patient advocate or ombudsperson by the Delaware Department of Health and Social Services. The patient advocate or ombudsperson must also meet the other witness requirements. (16 Del. C. § 2511(b).)

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