

Mathern, Tim

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Date: Tuesday, March 7, 2023 11:30 AM
To: Mathern, Tim
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Subject: SB 2125 - Testimony - Susan Johnson-Drenth

In a Health Care Directive, an individual names an agent(s) and alternate agents to make health care decisions upon the inability or unwillingness of the individual to communicate their own decisions. Additionally, a Health Care Directive allows an individual to state their wishes regarding important end-of-life decisions.

Once the Health Care Directive is properly signed by the principal, a copy of it should be provided to the medical institution for placement in an individual's medical chart. Recently, however, a medical institution, namely Sanford in Fargo, is refusing to accept Health Care Directives validly signed by the principal unless **all** agents (primary and contingent) have previously signed their acceptances on the Health Care Directive

Currently, North Dakota Century Code Section 23-06.5-06 states that in order for a Health Care Directive validly signed by the principal to even be effective, the agent(s) **must** accept their appointments in writing.

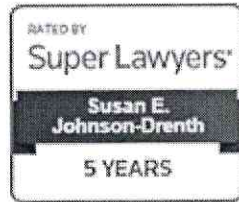
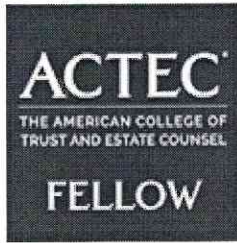
Waiting until all acceptances are signed in writing by all the agents before a medical institution may accept a Health Care Directive causes unnecessary delay in the administration of health care for an incapacitated principal. This unnecessary delay can be alleviated by removing the statutory requirement that, in order for a Health Care Directive to be effective, all agents must accept their appointments in writing. Other states, including Minnesota, do not have a statutory requirement that a health care agent must sign a written acceptance.

Interestingly, an individual named as attorney-in-fact in a Durable Power of Attorney does not need to sign a written acceptance under North Dakota Century Code Chapter 30.1-30. Therefore, it is illogical that a written acceptance is required by a medical agent in a Health Care Directive, but not by a financial agent (aka attorney-in-fact) in a Durable Power of Attorney.

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