CHAPTER 23-06.5
HEALTH CARE DIRECTIVES

23-06.5-01. Statement of purpose.

Every competent adult has the right and responsibility to make the decisions relating to the adult's own health care, including the decision to have health care provided, withheld, or withdrawn. The purpose of this chapter is to enable adults to retain control over their own health care during periods of incapacity through health directives and the designation of an individual to make health care decisions on their behalf. This chapter does not condone, authorize, or approve mercy killing, or permit an affirmative or deliberate act or omission to end life, other than to allow the natural process of dying.

23-06.5-02. Definitions.

In this chapter, unless the context otherwise requires:

1. "Agent" means an adult to whom authority to make health care decisions is delegated under a health care directive for the individual granting the power.
2. "Attending physician" means the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.
3. "Capacity to make health care decisions" means the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of and reasonable alternatives to any proposed health care, and the ability to communicate a health care decision.
4. "Health care decision" means consent to, refusal to consent to, withdrawal of consent to, or request for any care, treatment, service, or procedure to maintain, diagnose, or treat an individual's physical or mental condition, including:
   a. Selection and discharge of health care providers and institutions;
   b. Approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate;
   c. Directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care; and
   d. Establishment of an individual's abode within or without the state and personal security safeguards for an individual, to the extent decisions on these matters relate to the health care needs of the individual.
5. "Health care directive" means a written instrument that complies with this chapter and includes one or more health care instructions, a power of attorney for health care, or both.
6. "Health care instruction" means an individual's direction concerning a health care decision for the individual, including a written statement of the individual's values, preferences, guidelines, or directions regarding health care directed to health care providers, others assisting with health care, family members, an agent, or others.
7. "Health care provider" means an individual or facility licensed, certified, or otherwise authorized or permitted by law to administer health care, for profit or otherwise, in the ordinary course of business or professional practice.
8. "Long-term care facility" or "long-term care services provider" means a long-term care facility as defined in section 50-10.1-01.
9. "Principal" means an adult who has executed a health care directive.

23-06.5-03. Health care directive.

1. A principal may execute a health care directive. A health care directive may include one or more health care instructions to health care providers, others assisting with health care, family members, and a health care agent. A health care directive may include a power of attorney to appoint an agent to make health care decisions for the principal when the principal lacks the capacity to make health care decisions, unless otherwise specified in the health care directive. Subject to the provisions of this chapter and any express limitations set forth by the principal in the health care

directive, the agent has the authority to make any and all health care decisions on the principal's behalf that the principal could make.

2. After consultation with the attending physician and other health care providers, the agent shall make health care decisions:
   a. In accordance with the agent's knowledge of the principal's wishes and religious or moral beliefs, as stated orally, or as contained in the principal's health care directive; or
   b. If the principal's wishes are unknown, in accordance with the agent's assessment of the principal's best interests. In determining the principal's best interests, the agent shall consider the principal's personal values to the extent known to the agent.
3. A health care directive, including the agent's authority, is in effect only when the principal lacks capacity to make health care decisions, as certified in writing by the principal's attending physician, psychiatrist, or psychologist and filed in the principal's medical record, and ceases to be effective upon a determination that the principal has recovered capacity.
4. Notwithstanding subsection 3, the principal may authorize in a health care directive that the agent make health care decisions for the principal even though the principal retains capacity to make health care decisions. In that case, the health care directive is in effect as stated in the health care directive under any conditions the principal may impose. The principal's authorization under this subsection may be revoked in the same manner as a health care directive may be revoked under section 23-06.5-07.
5. The principal's attending physician shall make reasonable efforts to inform the principal of any proposed treatment, or of any proposal to withdraw or withhold treatment.
6. Nothing in this chapter permits an agent to consent to admission to a mental health facility or state institution for a period of more than forty-five days without a mental health proceeding or other court order, or to psychosurgery, abortion, or sterilization, unless the procedure is first approved by court order.

23-06.5-04. Restrictions on who can act as agent.

A person may not exercise the authority of agent while serving in one of the following capacities:

1. The principal's health care provider;
2. A nonrelative of the principal who is an employee of the principal's health care provider;
3. The principal's long-term care services provider; or
4. A nonrelative of the principal who is an employee of the principal's long-term care services provider.

23-06.5-05. Health care directive requirements - Execution and witnesses.

1. To be legally sufficient in this state, a health care directive must:
   a. Be in writing;
   b. Be dated;
   c. State the principal's name;
   d. Be executed by a principal with capacity to do so with the signature of the principal or with the signature of another person authorized by the principal to sign on behalf of the principal;
   e. Contain verification of the principal's signature or the signature of the person authorized by the principal to sign on behalf of the principal, either by a notary public or by witnesses as provided under this chapter; and
   f. Include a health care instruction or a power of attorney for health care, or both.
2. A health care directive must be signed by the principal and that signature must be verified by a notary public or at least two or more subscribing witnesses who are at least eighteen years of age. A person notarizing the document may be an employee of a health care or long-term care provider providing direct care to the principal. At least

one witness to the execution of the document must not be a health care or long-term care provider providing direct care to the principal or an employee of a health care or long-term care provider providing direct care to the principal on the date of execution. The notary public or any witness may not be, at the time of execution, the agent, the principal's spouse or heir, a person related to the principal by blood, marriage, or adoption, a person entitled to any part of the estate of the principal upon the death of the principal under a will or deed in existence or by operation of law, any other person who has, at the time of execution, any claims against the estate of the principal, a person directly financially responsible for the principal's medical care, or the attending physician of the principal. If the principal is physically unable to sign, the directive may be signed by the principal's name being written by some other person in the principal's presence and at the principal's express direction.

23-06.5-05.1. Suggested health care directive form.

A health care directive may include provisions consistent with this chapter, including:

1. The designation of one or more alternate agents to act if the named agent is not reasonably available to serve;
2. Directions to joint agents regarding the process or standards by which the agents are to reach a health care decision for the principal, and a statement whether joint agents may act independently of one another;
3. Limitations, if any, on the right of the agent or any alternate agents to receive, review, obtain copies of, and consent to the disclosure of the principal's medical records;
4. Limitations, if any, on the nomination of the agent as guardian under chapter 30.1-28;
5. A document of gift for the purpose of making an anatomical gift, as set forth in chapter 23-06.6 or an amendment to, revocation of, or refusal to make an anatomical gift;
6. Limitations, if any, regarding the effect of dissolution or annulment of marriage on the appointment of an agent;
7. Health care instructions regarding artificially administered nutrition or hydration; and
8. The designation of an agent authorized to make health care decisions for the principal even though the principal retains the capacity to make health care decisions.

23-06.5-06. Withdrawal as agent.

Subject to the right of the agent to withdraw, the health care directive creates authority for the agent to make health care decisions on behalf of the principal at such time as the principal becomes incapacitated. Until the principal becomes incapacitated, the agent may withdraw by giving notice to the principal. After the principal becomes incapacitated, the agent may withdraw by giving notice to the attending physician. The attending physician shall cause the withdrawal to be recorded in the principal's medical record.

23-06.5-07. Revocation.

1. A health care directive is revoked:
   a. By notification by the principal to the agent or a health care or long-term care services provider orally, or in writing, or by any other act evidencing a specific intent to revoke the directive; or
   b. By execution by the principal of a subsequent health care directive.
2. A principal's health care or long-term care services provider who is informed of or provided with a revocation of a health care directive shall immediately record the revocation in the principal's medical record and notify the agent, if any, the attending physician, and staff responsible for the principal's care of the revocation.
3. Unless otherwise provided in the health care directive, if the spouse is the principal's agent, the divorce of the principal and spouse revokes the appointment of the divorced spouse as the principal's agent.

23-06.5-08. Inspection and disclosure of medical information.

Subject to any limitations set forth in the health care directive by the principal, an agent whose authority is in effect may for the purpose of making health care decisions:

1. Request, review, and receive any information, oral or written, regarding the principal's physical or mental health, including medical and hospital records;
2. Execute any releases or other documents which may be required in order to obtain such medical information; and
3. Consent to the disclosure of such medical information.

23-06.5-09. Duties of provider.

1. A principal's health care or long-term care services provider, and employees thereof, having knowledge of the principal's health care directive, are bound to follow the health care decisions of the principal's designated agent or a health care instruction to the extent they are consistent with this chapter and the health care directive.
2. A principal's health care or long-term care services provider may decline to comply with a health care decision of a principal's designated agent or a health care instruction for reasons of conscience or other conflict. A provider that declines to comply with a health care decision or instruction shall take all reasonable steps to transfer care of the principal to another health care provider who is willing to honor the agent's health care decision, or instruction or directive, and shall provide continuing care to the principal until a transfer can be effected.
3. This chapter does not require any physician or other health care provider to take any action contrary to reasonable medical standards.
4. This chapter does not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort, care, or alleviation of pain.
5. Notwithstanding a contrary direction contained in a health care directive executed under this chapter, health care must be provided to a pregnant principal unless, to a reasonable degree of medical certainty as certified on the principal's medical record by the attending physician and an obstetrician who has examined the principal, such health care will not maintain the principal in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful or unreasonably painful to the principal or will prolong severe pain that cannot be alleviated by medication.
6. In the absence of a direction to the contrary contained in a health care directive prepared under this chapter, nothing in this chapter requires a physician to withhold, withdraw, or administer nutrition or hydration, or both, from or to the principal. Nutrition or hydration, or both, must be withdrawn, withheld, or administered, if the principal for whom the administration of nutrition or hydration is considered, has directed in a health care directive the principal's desire that nutrition or hydration, or both, be withdrawn, withheld, or administered. If a health care directive prepared under this chapter does not indicate the principal's direction with respect to nutrition or hydration, nutrition or hydration, or both, may be withdrawn or withheld if the attending physician has determined that the administration of nutrition or hydration is inappropriate because the nutrition or hydration cannot be physically assimilated by the principal or would be physically harmful or would cause unreasonable physical pain to the principal.

23-06.5-10. Freedom from influence.

A health care provider, long-term care services provider, health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan may not charge a person a different rate or require any person to execute a health care directive as a condition of admission to a hospital or long-term care facility nor as a condition of being insured for, or receiving, health care or long-term care services. Health care or long-term care services may not be refused because a person has executed a health care directive.

23-06.5-11. Reciprocity.

This chapter does not limit the enforceability of a health care directive or similar instrument executed in another state or jurisdiction in compliance with the law of that state or jurisdiction.

23-06.5-12. Immunity.

1. A person acting as agent pursuant to a health care directive or person authorized to provide informed consent pursuant to section 23-12-13 may not be subjected to criminal or civil liability for making a health care decision in good faith pursuant to the provisions of this chapter or section 23-12-13.
2. A health care or long-term care services provider, or any other person acting for the provider or under the provider's control may not be subjected to civil or criminal liability, or be deemed to have engaged in unprofessional conduct, for any act or intentional failure to act done in good faith and with ordinary care if the act or intentional failure to act is done pursuant to the dictates of a health care directive, the directives of the patient's agent, or other provisions of this chapter or section 23-12-13.
3. A health care provider who administers health care necessary to keep the principal alive, despite a health care decision of the agent to withhold or withdraw that health care, or a health care provider who withholds health care that the provider has determined to be contrary to reasonable medical standards, despite a health care decision of the agent to provide the health care, may not be subjected to civil or criminal liability or be deemed to have engaged in unprofessional conduct if that health care provider promptly took all reasonable steps to:
   a. Notify the agent of the health care provider's unwillingness to comply;
   b. Document the notification in the principal's medical record; and
   c. Arrange to transfer care of the principal to another health care provider willing to comply with the decision of the agent.

23-06.5-13. Presumptions and application.

1. Unless a court of competent jurisdiction determines otherwise, the appointment of an agent in a health care directive executed pursuant to this chapter takes precedence over any authority to make medical decisions granted to a guardian pursuant to chapter 30.1-28.
2. To the extent that health care directives conflict, the instrument executed later in time controls.
3. The principal is presumed to have the capacity to execute a health care directive and to revoke a health care directive, absent clear and convincing evidence to the contrary.
4. A health care provider or agent may presume that a health care directive is legally sufficient absent actual knowledge to the contrary. A health care directive is presumed to be properly executed, absent clear and convincing evidence to the contrary.
5. An agent and a health care provider acting pursuant to the direction of an agent are presumed to be acting in good faith, absent clear and convincing evidence to the contrary.
6. A health care directive is presumed to remain in effect until the principal modifies or revokes it, absent clear and convincing evidence to the contrary.
7. This chapter does not create a presumption concerning the intention of an individual who has not executed a health care directive and does not impair or supersede any right or responsibility of an individual to consent, refuse to consent, or withdraw consent to health care on behalf of another in the absence of a health care directive.
8. A copy of a health care directive is presumed to be a true and accurate copy of the executed original, absent clear and convincing evidence to the contrary, and must be given the same effect as an original.
9. Death resulting from the withholding or withdrawal of health care pursuant to a health care directive in accordance with this chapter does not constitute, for any purpose, a suicide or homicide.
10. The making of a health care directive under this chapter does not affect in any manner the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it

affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity is not legally impaired or invalidated in any manner by the withholding or withdrawal of health care from an insured principal, notwithstanding any term to the contrary.

11. A person may not prohibit or require the execution of a health care directive as a condition for being insured for, or receiving, health care services.
12. This chapter does not affect the right of a patient to make decisions regarding use of health care, so long as the patient is able to do so, or impair or supersede any right or responsibility that a person has to effect the provision, withholding, or withdrawal of health care.
13. Health care directives prepared under this chapter which direct the withholding of health care do not apply to emergency treatment performed in a prehospital situation.

23-06.5-14. Liability for health care costs.

Liability for the cost of health care provided pursuant to the agent's decision is the same as if the health care were provided pursuant to the principal's decision.

23-06.5-15. Validity of previously executed durable powers of attorney or other directives.

A health care directive executed before August 1, 2005, which complies with the law in effect at the time it was executed, including former chapter 23-06.4, must be given effect pursuant to this chapter. This chapter does not affect the validity or enforceability of a durable power of attorney for health care executed before August 1, 2005.

23-06.5-16. Use of statutory form.

The statutory health care directive form described in section 23-06.5-17 may be used and is an optional form, but not a required form, by which a person may execute a health care directive pursuant to this chapter. Another form may be used if it complies with this chapter.

23-06.5-17. Optional health care directive form.

The following is an optional form of a health care directive and is not a required form:

HEALTH CARE DIRECTIVE

I_____, understand this document allows me to do ONE OR ALL of the following:

PART I: Name another individual (called the health care agent) to make health care decisions for me if I am unable to make and communicate health care decisions for myself. My health care agent must make health care decisions for me based on the instructions I provide in this document (Part II), if any, the wishes I have made known to him or her, or my agent must act in my best interest if I have not made my health care wishes known.

AND/OR

PART II: Give health care instructions to guide others making health care decisions for me. If I have named a health care agent, these instructions are to be used by the agent. These instructions may also be used by my health care providers, others assisting with my health care, and my family, in the event I cannot make and communicate decisions for myself.

AND/OR

PART III: Allows me to make an organ and tissue donation upon my death by signing a document of anatomical gift.

PART I: APPOINTMENT OF HEALTH CARE AGENT
THIS IS WHO I WANT TO MAKE HEALTH CARE DECISIONS
FOR ME IF I AM UNABLE TO MAKE AND COMMUNICATE
HEALTH CARE DECISIONS FOR MYSELF
(I know I can change my agent or alternate agent at any time
and I know I do not have to appoint an agent or an alternate agent)

NOTE: If you appoint an agent, you should discuss this health care directive with your agent and give your agent a copy. If you do not wish to appoint an agent, you may leave Part I blank

and go to Part II and/or Part III. None of the following may be designated as your agent: your treating health care provider, a nonrelative employee of your treating health care provider, an operator of a long-term care facility, or a nonrelative employee of a long-term care facility.

When I am unable to make and communicate health care decisions for myself, I trust and appoint_____ to make health care decisions for me. This individual is called my health care agent.

Relationship of my health care agent to me: _____

Telephone number of my health care agent: _____

Address of my health care agent: _____

(OPTIONAL) APPOINTMENT OF ALTERNATE HEALTH CARE AGENT: If my health care agent is not reasonably available, I trust and appoint _____ to be my health care agent instead.

Relationship of my alternate health care agent to me: _____

Telephone number of my alternate health care agent: _____

Address of my alternate health care agent: _____

THIS IS WHAT I WANT MY HEALTH CARE AGENT TO BE ABLE TO DO IF I AM UNABLE TO MAKE AND COMMUNICATE HEALTH CARE DECISIONS FOR MYSELF

(I know I can change these choices)

My health care agent is automatically given the powers listed below in (A) through (D). My health care agent must follow my health care instructions in this document or any other instructions I have given to my agent. If I have not given health care instructions, then my agent must act in my best interest.

Whenever I am unable to make and communicate health care decisions for myself, my health care agent has the power to:

(A) Make any health care decision for me. This includes the power to give, refuse, or withdraw consent to any care, treatment, service, or procedures. This includes deciding whether to stop or not start health care that is keeping me or might keep me alive and deciding about mental health treatment.

(B) Choose my health care providers.

(C) Choose where I live and receive care and support when those choices relate to my health care needs.

(D) Review my medical records and have the same rights I would have to give my medical records to other people.

If I DO NOT want my health care agent to have a power listed above in (A) through (D) OR if I want to LIMIT any power in (A) through (D), I MUST say that here:

_____

_____

_____

My health care agent is NOT automatically given the powers listed below in (1) and (2). If I WANT my agent to have any of the powers in (1) and (2), I must INITIAL the line in front of the power; then my agent WILL HAVE that power.

____(1) To decide whether to donate any parts of my body, including organs, tissues, and eyes, when I die.

____(2) To decide what will happen with my body when I die (burial, cremation).

If I want to say anything more about my health care agent's powers or limits on the powers, I can say it here:

_____

_____

_____

PART II: HEALTH CARE INSTRUCTIONS

NOTE: Complete this Part II if you wish to give health care instructions. If you appointed an agent in Part I, completing this Part II is optional but would be very helpful to your agent. However, if you chose not to appoint an agent in Part I, you MUST complete, at a minimum, Part II (B) if you wish to make a valid health care directive.

These are instructions for my health care when I am unable to make and communicate health care decisions for myself. These instructions must be followed (so long as they address my needs).

(A) THESE ARE MY BELIEFS AND VALUES ABOUT MY HEALTH CARE

(I know I can change these choices or leave any of them blank)

I want you to know these things about me to help you make decisions about my health care:

My goals for my health care:

_____
_____
_____

My fears about my health care:

_____
_____
_____

My spiritual or religious beliefs and traditions:

_____
_____
_____

My beliefs about when life would be no longer worth living:

_____
_____
_____

My thoughts about how my medical condition might affect my family:

_____
_____
_____

(B) THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH CARE

(I know I can change these choices or leave any of them blank)

Many medical treatments may be used to try to improve my medical condition or to prolong my life. Examples include artificial breathing by a machine connected to a tube in the lungs, artificial feeding or fluids through tubes, attempts to start a stopped heart, surgeries, dialysis, antibiotics, and blood transfusions. Most medical treatments can be tried for a while and then stopped if they do not help.

I have these views about my health care in these situations:

(Note: You can discuss general feelings, specific treatments, or leave any of them blank).

If I had a reasonable chance of recovery and were temporarily unable to make and communicate health care decisions for myself, I would want:

_____
_____
_____

If I were dying and unable to make and communicate health care decisions for myself, I would want:

_____
_____
_____

If I were permanently unconscious and unable to make and communicate health care decisions for myself, I would want:

_____
_____
_____

If I were completely dependent on others for my care and unable to make and communicate health care decisions for myself, I would want:

_____
_____
_____

In all circumstances, my health care providers will try to keep me comfortable and reduce my pain. This is how I feel about pain relief if it would affect my alertness or if it could shorten my life:

_____
_____
_____

There are other things that I want or do not want for my health care, if possible:

Who I would like to be my health care provider:

_____
_____
_____

Where I would like to live to receive health care:

_____
_____
_____

Where I would like to die and other wishes I have about dying:

_____
_____
_____

My wishes about what happens to my body when I die (cremation, burial, whole body donation):

_____
_____
_____

Any other things:

_____
_____
_____

PART III: MAKING AN ANATOMICAL GIFT

(A) I WANT TO BE AN ORGAN DONOR

[ ] I would like to be an organ donor at the time of my death. I have told my family my decision and ask my family to honor my wishes. I wish to donate the following (initial one statement):

[ ] Any needed organs and tissue.

[ ] Only the following organs and tissue:_____

(B) I DO NOT WANT TO BE AN ORGAN DONOR

[ ] I do not want to be an organ donor at the time of my death. I have told my family my decision and ask my family to honor my wishes.

PART IV: MAKING THE DOCUMENT LEGAL

EARLIER DESIGNATIONS REVOKED. I revoke any earlier health care directive.

DATE AND SIGNATURE OF PRINCIPAL

(YOU MUST DATE AND SIGN THIS HEALTH CARE DIRECTIVE)

I sign my name to this Health Care Directive Form on_____ at
(date)

_____
(city)

_____
(state)

_____
(you sign here)

(THIS HEALTH CARE DIRECTIVE WILL NOT BE VALID UNLESS IT IS NOTARIZED OR SIGNED BY TWO QUALIFIED WITNESSES WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IF YOU HAVE ATTACHED ANY ADDITIONAL PAGES TO THIS FORM, YOU MUST DATE AND SIGN EACH OF THE ADDITIONAL PAGES AT THE SAME TIME YOU DATE AND SIGN THIS HEALTH CARE DIRECTIVE.)

NOTARY PUBLIC OR STATEMENT OF WITNESSES

This document must be (1) notarized or (2) witnessed by two qualified adult witnesses. The individual notarizing this document may be an employee of a health care or long-term care provider providing your care. At least one witness to the execution of the document may not be a health care or long-term care provider providing you with direct care or an employee of the health care or long-term care provider providing you with direct care. None of the following may be used as a notary or witness:

1. An individual you designate as your agent or alternate agent;
2. Your spouse;
3. An individual related to you by blood, marriage, or adoption;
4. An individual entitled to inherit any part of your estate upon your death; or
5. An individual who has, at the time of executing this document, any claim against your estate.

Option 1: Notary Public

State of _____
County of _____
In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the individual signing this document to sign on the declarant's behalf.

_____
(Signature of Notary Public)
My commission expires _____, 20__.

Option 2: Two Witnesses

Witness One:

(1) In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the individual signing this document to sign on the declarant's behalf.
(2) I am at least eighteen years of age.
(3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [ ].
I certify that the information in (1) through (3) is true and correct.

_____
(Signature of Witness One)

_____
(Address)

Witness Two:

(1) In my presence on_____(date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the individual signing this document to sign on the declarant's behalf.
(2) I am at least eighteen years of age.
(3) If I am a health care provider or an employee of a health care provider giving direct care to the declarant, I must initial this box: [ ].
I certify that the information in (1) through (3) is true and correct.

_____
(Signature of Witness Two)

_____
(Address)

PRINCIPAL'S STATEMENT

I have read a written explanation of the nature and effect of an appointment of a health care agent which is attached to my health care directive.

Dated this _____ day of _____, 20 _____. _____
(Signature of Principal)

23-06.5-18. Penalties.

1. A person who, without authorization of the principal, willfully alters or forges a health care directive or willfully conceals or destroys a revocation with the intent and effect of causing a withholding or withdrawal of life-sustaining procedures which hastens the death of the principal is guilty of a class C felony.
2. A person who, without authorization of the principal, willfully alters, forges, conceals, or destroys a health care directive or willfully alters or forges a revocation of a health care directive is guilty of a class A misdemeanor.
3. The penalties provided in this section do not preclude application of any other penalties provided by law.

23-06.5-19. Health care record registry - Fees.

1. As used in this section:
   a. "Health care record" means a health care directive or a revocation of a health care directive executed in accordance with this chapter.
   b. "Registration form" means a form prescribed by the information technology department to facilitate the filing of a health care record.
2. a. The information technology department may establish and maintain a health care record registry, through which a health care record may be filed. The registry must be accessible through a website maintained by the information technology department.
   b. An individual who is the subject of a health care record, or that individual's agent, may submit to the information technology department for registration, using a registration form, a health care record executed in accordance with this chapter.
3. Failure to register a health care record with the information technology department under this section does not affect the validity of the health care record. Failure to notify the information technology department of the revocation of a health care record filed under this section does not affect the validity of a revocation that otherwise meets the statutory requirements for revocation.
4. a. Upon receipt of a health care record and completed registration form, the information technology department shall create a digital reproduction of the health care record, enter the reproduced health care record into the health care record registry database, and assign each registration a unique file number. The information technology department is not required to review a health care record to ensure the health care record complies with any particular statutory requirements that may apply to the health care record.
   b. The information technology department shall delete a health care record filed with the registry under this section upon receipt of a revocation of the health care record along with that document's file number.
   c. The entry of a health care record under this section does not affect or otherwise create a presumption regarding the validity of the health care record or the accuracy of the information contained in the health care record.
5. a. The registry must be accessible by entering the file number and password on the internet website. Registration forms, file numbers, and other information maintained by the information technology department under this section are confidential and the state may not disclose this information to any person other than the subject of the document, or the subject's agent. A health care record may be released to the subject of the document, the subject's agent, or the subject's health care provider. The information technology department may not use information contained in the registry except as provided under this chapter.
   b. At the request of the subject of the health care record, or the subject's agent, the information technology department may transmit the information received regarding the health care record to the registry system of another jurisdiction as identified by the requester.
   c. This section does not require a health care provider to seek to access registry information about whether a patient has executed a health care record that may

be registered under this section. A health care provider who makes good-faith health care decisions in reliance on the provisions of an apparently genuine health care record received from the registry is immune from criminal and civil liability to the same extent and under the same conditions as prescribed in section 23-06.5-12. This section does not affect the duty of a health care provider to provide information to a patient regarding health care directives as may be required under federal law.

6. The information technology department may charge and collect a reasonable fee for filing a health care record and a revocation of a health care record.