

2009 SENATE HUMAN SERVICES

SB 2237

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2237

Senate Human Services Committee

☐ Check here for Conference Committee

Hearing Date: 01/27/2009

Recorder Job Number: 7915, 7923

Committee Clerk Signature	<i>Mary K. Monson</i>
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Minutes:

Vice Chairman Erbele Opened the hearing on SB 2237.

Senator Tom Fiebiger Introduced SB 2237. There appears to be a proposed amendment by the Secretary of State that I believe will be amenable to those of us in support of the bill. I

encourage thoughtful consideration of this bill and respectfully urge a do pass

recommendation.

Susan Johnson-Drenth Attorney with Vogel Law Firm, Chair of the ND State Bar Association Elder Law Section. Spoke in support of 2237. See attachment #1.

William L. Guy III A letter was submitted in lieu of oral testimony. Wrote in support of 2237. See attachment #2.

Senator Dever Are there any other places that health care directives are now registered?

Johnson-Drenth I've only used Arizona's but I think there might be one other state but I'm not sure which state.

Senator Dever Right now I just give my health care directive to my health care provider.

Johnson-Drenth I don't know of any state registries. I do know there are for profit companies that are trying to do this but none are currently functioning.

Senator Dever Are there any considerations with HIPA?

Johnson-Drenth I don't think so, there is no confidential information included in the directive relating to your diagnosis, etc. It is only going to be given to the individual for them to have in their wallet.

Senator Dever Is this voluntary?

Johnson-Drenth Yes, it is entirely voluntary. It is only to benefit those who want to travel and are going to be away from their health care provider. You can revoke the document if you wish to change anything in it.

Senator Lee How will you make people aware of this program and have them sign up?

Johnson-Drenth I give in excess of 40 seminars a year to speak about health care directives. There was also a national health care directive day in 2008 facilitated by many law schools. I think those venues would be good places to raise awareness about this program. We need to get information out there. I think there will be more people than you think who will be interested in this program.

Al Jaeger Secretary of State. See attachment #3 which also includes a proposed amendment

Senator Lee What would happen, if we are looking at a delayed implementation, if we deleted the appropriation or did something seriously different with it because you would know by that time what the cost will be?

Jaeger If the senate passes this to the house, we will talk to our vendor and see if we can get a better ball park figure about the funding. We do need to have the money for the next biennium so that we can pay the vendor to have the program in place by the date of the bill.

Senator Erbele What are the fees? You thought 10 dollars might be a little low.

Jaeger \$10 in the annual fee for a non-profit report but any other entity has a \$25 fee. We have some costs just due to processing. I think that with the time it actually takes to scan the directive and make the card \$25 would probably be closer to our cost on that. It would not

cover the program cost. I believe the sponsors thought any fee higher than \$10 might discourage people from using the program. The \$10 just won't cover the receiving and processing on our end.

Linda Johnson Wurtz Associate State Director for Advocacy for AARP ND. Spoke in support of 2237. See attachment #4

Senator Erbele With the AARP database and mailings you do, would you then share information?

Wurtz Yes

Bruce Levi ND Medical Association. Spoke in support of 2237. See attachment #5.

Senator Dever In a medical emergency, is it typical for a medical professional to go through a person's wallet to look for info?

Levi My sense is that people on the provider side are now encouraged to get copies of the medical directives on file so they become a part of their medical record. I think part of the protocol might be to tell their provider that the info is up on the registry. I'm not sure if they go through personal belongings or not.

Discussion about finding information on a person's body or in personal effects.

Christopher Dodson Executive Director of the ND Catholic Conference. We do not have much to add but as you know we have done a lot of work on advanced health care directives. One of the things we are working on is helping people figure out what to do with the directive once they have completed it. We encourage people to make lots of copies and distribute them; we especially encourage family members to have lots of copies. What comes up in seminars repeatedly is, I have an advanced directive but when I get transferred to another facility they ask me if I have a living will and the person says no meaning I left it. They then have to get another form when they already have an advanced health care directive. Legally when you

complete a new form, it revokes the old form. They really should say yes, and get a copy of their form from elsewhere. This registry would help with that. Another problem people have encountered is medical emergencies. Spoke at length about that situation.

Senator Erbele How many people typically fill out a form at your seminars?

Dodson We tell them not to fill it out there, the workshop walks them through the process but I don't want them to fill out there because I want them to talk with their family first. Typically we have people contact us through the website one at a time not in large numbers.

Arnold Thomas Testimony Submitted. See Attachment #6.

Senator Lee Commented that the link was on her church website and that it has been useful.

There was no opposition or neutral testimony given.

Senator Erbele closed the hearing on SB 2237.

Chairman Lee Opened the discussion on SB 2237.

Discussion about the fee schedule—decided to let Secretary of State decide what fee was appropriate. Want to have a reasonable fee but do not want it to be in statute so it has to be changed every year. Page 3. Line 4-5 delete reference to \$10. Decided to add reasonable fee language to the proposed amendment. Discussed having a single database for all information but decided that it might be too much to add to the bill right now. Asked the intern for information.

Chairman Lee Suspended the discussion on SB 2237

Job #7923

Chairman Lee Reopened the discussion on SB 2237

Briefly discussed the amendment that was proposed in the morning section.

Senator Erbele Moved to Amend SB 2237

Senator Dever Second

The Clerk called the role on the motion to move the amendment. **Yes: 6, No: 0, Absent: 0.**

Senator Dever I move Do Pass as Amended and Rerefer to Appropriations.

Senator Erbele Second

The Clerk called the role on the motion to **Do Pass as Amended and Rerefer to Appropriations. Yes: 6, No: 0, Absent: 0.**

Senator Heckaman will carry the bill.

FISCAL NOTE
Requested by Legislative Council
04/03/2009

Amendment to: Engrossed
 SB 2237

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$1,000	\$0	\$2,000
Expenditures	\$0	\$0	\$0	\$100,000	\$0	\$0
Appropriations	\$0	\$0	\$0	\$100,000	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill allows the agency to create a registry for a health care record, which can be assessed 24/7. The Secretary is authorized to accept private funds and proceed with establishing the registry upon the acceptance of those funds.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The estimate of \$100,000 to establish the registry is based on the cost incurred by the states of North Carolina and Arizona to create the necessary software.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The bill allows the Secretary of State to set a reasonable fee to provide the service.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures to establish the registry would be made from the operating line in the agency's general services operating fund.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The agency will request increased spending authority through the Emergency Commission for its general services operating fund, when and if the other funds become available.

Name:	Al Jaeger	Agency:	Secretary of State
Phone Number:	701-328-2900	Date Prepared:	04/03/2009

FISCAL NOTE
Requested by Legislative Council
01/30/2009

Amendment to: SB 2237

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$1,000	\$0	\$2,000
Expenditures	\$0	\$0	\$100,000	\$0	\$0	\$0
Appropriations	\$0	\$0	\$100,000	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill requires the Secretary of State to create a registry that can reproduce a health care record into a digital reproduction that can be assessed 24/7. To create the registry software will require funding that is over and above the Secretary of State's appropriation for its office operations.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The estimate is based on the cost incurred by the states of North Carolina and Arizona to create the necessary software.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The bill provides for a fee of \$10 to file a health care record and a fee of \$10 to revoke such a record. During its first year of operation, the State of North Carolina, which has a much larger population, had 250 filings. In the State of Arizona, the cost of the creating the software and annual maintenance was underwritten by an agency outside of state government. While the bill allows the Secretary to accept such gifts, grants, etc., there is no way in which to estimate the amount that could be received under those provisions.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures would come from the agency's operating line.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

It is estimated the agency will need an appropriation of \$100,000 to create the registry and purchase the supporting hardware and supplies to implement it.

Name:	Al Jaeger	Agency:	Secretary of State
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Phone Number: 328-3670

Date Prepared: 01/30/2009

FISCAL NOTE
Requested by Legislative Council
01/20/2009

Bill/Resolution No.: SB 2237

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$1,000	\$0	\$2,000
Expenditures	\$0	\$0	\$100,000	\$0	\$0	\$0
Appropriations	\$0	\$0	\$100,000	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill requires the Secretary of State to create a registry that can reproduce a health care record into a digital reproduction that can be assessed 24/7. To create the registry software will require funding that is over and above the Secretary of State's appropriation for its office operations.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The estimate is based on the cost incurred by the states of North Carolina and Arizona to create the necessary software.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The bill provides for a fee of \$10 to file a health care record and a fee of \$10 to revoke such a record. During its first year of operation, the State of North Carolina, which has a much larger population, had 250 filings. In the State of Arizona, the cost of the creating the software and annual maintenance was underwritten by an agency outside of state government. While the bill allows the Secretary to accept such gifts, grants, etc., there is no way in which to estimate the amount that could be received under those provisions.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures would come from the agency's operating line.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

It is estimated the agency will need an appropriation of \$100,000 to create the registry.

Name:	Al Jaeger	Agency:	Secretary of State
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Phone Number: 328-2900

Date Prepared: 01/26/2009

93
1-28-09

PROPOSED AMENDMENTS TO SENATE BILL NO. 2237

Page 1, line 2, after "registry" insert "; to provide an appropriation; and to provide an effective date"

Page 3, line 2, after the underscored period insert "Any fees collected under this chapter must be deposited in the secretary of state's general services operating fund."

Page 3, line 3, after "collect" insert "a reasonable fee" and replace the underscored colon with "filing"

Page 3, line 4, remove "a. Filing" and remove ", ten dollars;"

Page 3, line 5, remove "b. Filing" and remove ", ten dollars"

Page 3, after line 5, insert:

"SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the secretary of state for the purpose of establishing the health care record registry, for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act becomes effective on July 1, 2010."

Renumber accordingly

Date: 1-27-09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2237

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Rerefer to Appropriations
☒ Adopt Amendment ☐ Reconsider

Motion Made By Sen. Erbele Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 1-27-09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2237

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 90143.0301 Title .0400

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended ☒ Rerefer to Appropriations

☐ Adopt Amendment ☐ Reconsider

Motion Made By Sen. Dever Seconded By Sen. Erbele

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee, Chairman	✓		Senator Joan Heckaman	✓	
Senator Robert Erbele, V.Chair	✓		Senator Richard Marcellais	✓	
Senator Dick Dever	✓		Senator Jim Pomeroy	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Heckaman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2237: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2237 was placed on the Sixth order on the calendar.

Page 1, line 2, after "registry" insert "; to provide an appropriation; and to provide an effective date"

Page 3, line 2, after the underscored period insert "Any fees collected under this chapter must be deposited in the secretary of state's general services operating fund."

Page 3, line 3, after "collect" insert "a reasonable fee" and replace the underscored colon with "filing"

Page 3, line 4, remove "a. Filing" and remove ", ten dollars;"

Page 3, line 5, remove "b. Filing" and remove ", ten dollars"

Page 3, after line 5, insert:

"SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the secretary of state for the purpose of establishing the health care record registry, for the biennium beginning July 1, 2009, and ending June 30, 2011.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act becomes effective on July 1, 2010."

Renumber accordingly

2009 SENATE APPROPRIATIONS

SB 2237

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2237

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 02-03-09

Recorder Job Number: 8479

Committee Clerk Signature

Aline Delzer

Minutes:

Chairman Holmberg called the committee hearing to order on SB 2237 regarding a health care record registry.

Senator Thomas D. Fiebiger District #45. Testified in favor of SB 2237. Basically this bill is modeled after what they do in Arizona. In the health care directive, an individual names an agent and alternative agents to make health care decisions upon the inability or unwillingness of that individual. This health care directive allows individuals to make important decisions regarding end of life decisions such as the use of a ventilator, tube feeding, and other items. Once the health care directive has been properly signed, it should be provided to the attending physician for placement in the individual's medical chart. In our increasingly mobile society, especially retirees that travel south for the winter, there is a great concern about the portability of the health care directive document. Some individuals keep these in their glove compartments or suitcases they may forget to bring it on their travels entirely. The benefit of the proposed health care registry bill is its portability. Here is how we anticipate this would be used: 1st a person would properly complete and sign the health care directive. They will fill out the prescribed form that is supplied by the Secretary of State's Office. They would then provide a copy to the Secretary of State with whatever that reasonable fee is. The secretary will scan the document into their data base and provide the individual with a wallet card which has the

website address for access to a confidential file number and password unique to that individual. They present the wallet card to the health care provider as needed; they will enter the website address on the computer. The health care provider will then see the health care directive on their computer screen and print it off. It is designed to assist our citizens wherever they may be. There is an appropriation (3.19) that is primarily the initial setup costs; I don't think there will be any ongoing costs for that. I speak in support of the bill.

Senator Tim Mathern District #11. Testified in favor of SB 2237. It was brought to my attention as a need during the interim that there are some persons who stay in the hospital or receive intensive care while someone simultaneously is looking for their health care directive. I just ask the committee to consider implementation of such a registry and speedy implementation so that an individual's wishes can be put into effect while receiving medical treatment.

Al Jaeger Secretary of State. Testified in favor of SB 2237. See attachment # 1. You'll notice in the bill the effective date would be 2010. The reason being that the software in development will be completed by 2009, after that project is done we can work on this project. There is a fiscal note; the bill was amended so I could set a *reasonable* rate. You'll see by the fiscal note where we will not cover the cost, we view this as a service to the public. We have one advantage, in talking with our software developer, we will be available to develop this at a lower cost. We do not see this as a continuing cost.

Senator Warner I understand when you say this would be a 24/7 operation, this would be entirely web based?

Jaeger No, the document would come to us and we would then scan it. The 24/7 refers to the availability of the document. The scanning process is part of the administrative cost for the program.

Senator Warner This document would be a notarized document, do they need the original?

Jaeger I don't know how the law addresses that. I guess the document would come to us in some fashion. I don't know if it is required to be notarized. We haven't given that any thought as we are simply a document receptacle. As to how the directives are legally put together, maybe the sponsor knows more.

Senator Warner Because of HIPAA requirements, are there any implications in this bill?

Jaeger I can only repeat what the senator stated: health care directives don't fall under HIPAA. The code is so only family has access to that information. It will have very limited circulation.

Senator Lindaas Who would be submitting these?

Jaeger I assume anyone can do it. I would guess that it would be coming in from an individual. Those types of things could be best addressed to the senator. Bill Guy worked with us on the drafting of this. We'll take the documents that are submitted under this format and put it on record.

V. Chair Bowman What's going to be on this registry on someone's health care that's not already on record at your hospital or clinic that could be addressed without this?

Jaeger If you are in an accident, it would be similar information to that on the donor card. When health care providers are facing health care questions, they want access to the requests of the patient. It has nothing to do with your medical history per se.

V. Chair Bowman Like a living will?

Jaeger That term is not legally used anymore but I guess so, I am only repeating what I heard in testimony. We think this has some public merit; Arizona and NC have created these data bases.

Senator Fiebiger I would like to clarify some of the questions the senators have asked. My understanding is that Susan Grant and Bill Guy, who work in elder care law, helped draft this

bill and its revisions. With respect to the questions of what is needed (notarization, etc.) the definition section talks about the health care record which is defined as one that is executed in accordance with chapter 23. There is no requirement for Al Jaeger's office to determine the validity of document. The idea of the health care directive is to allow our citizens, wherever they are, to be able to state their wishes regarding end of life decisions. The registry allows people the freedom not to worry about carrying their directive with them.

Senator Kilzer I have questions about accessing this information. A lot of patients stroke during the night and are then brought in to the hospital. How would the emergency people know the access code?

Senator Fiebiger My thought would be that a family member would have to provide the information. I don't know the specifics on that.

There was no opposition testimony given.

Chairman Holmberg closed the hearing on SB 2237.

Senator Mathern In reference to a question from V. Chair Bowman, many hospitals and clinics now ask their patients to complete these directives. Sometimes people don't remember if they have done one, but they might remember if their license reveals that they did it. Then that record could be looked at and used in the hospital setting. It won't solve all the problems, but it would another way to give people access to their medical information.

V. Chair Bowman Would the card you carry have a number on it?

Senator Mathern Yes, that number would be used to get into that system. Also have a password which when entered accesses the information.

Senator Christmann As I recall you can change the directive, who controls the changing of the directive?

Senator Mathern The way the bill is drafted, the individual has the control to change it. If I had one, which I do, I would be the person and the only person to change it. If I turned over that right to someone else, they could do it.

Senator Christmann Is it a different access code for reading it than from changing it.

Senator Mathern That is something the secretary of state is working on. The plan is to have a password that you would use to change the directive.

Senator Warner I think you have to have a new directive, you couldn't go online and change it.

Senator Mathern What I meant with change is that you would have to do a new one.

V. Chair Bowman Closed the hearing on SB 2237.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2237

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: February 12, 2009

Recorder Job Number: 9367 (starting at 29:50)

Committee Clerk Signature

Rose Laning

Minutes:

Chairman Holmberg re-opened the hearing. Looking at the Secretary of State's letter, they said they wanted the attached amendment and that amendment was attached in Human Services.

Senator Warner stated the original bill said \$10 and the amendment said reasonable fee which may be about \$5.

Senator Kilzer moved Do Pass on SB 2237

Senator Warner seconded.

Discussion followed.

A Roll Call vote was taken. Yea: 12 Nay: 1 Absent: 1

The bill goes back to the Human Services committee.

Date: 2-12-09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2237

Senate _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen Kilzer Seconded By Sen Warner

Representatives	Yes	No	Representatives	Yes	No
Senator Wardner	<input checked="" type="checkbox"/>		Senator Robinson	<input checked="" type="checkbox"/>	
Senator Fischer	<input checked="" type="checkbox"/>		Senator Lindaas	<input checked="" type="checkbox"/>	
V. Chair Bowman		<input checked="" type="checkbox"/>	Senator Warner	<input checked="" type="checkbox"/>	
Senator Krebsbach	<input checked="" type="checkbox"/>		Senator Krauter	<input checked="" type="checkbox"/>	
Senator Christmann	<input checked="" type="checkbox"/>		Senator Seymour	<input checked="" type="checkbox"/>	
Chairman Holmberg	<input checked="" type="checkbox"/>		Senator Mathern	<input checked="" type="checkbox"/>	
Senator Kilzer	<input checked="" type="checkbox"/>				
V. Chair Grindberg	<input checked="" type="checkbox"/>				

Total Yes 12 No 1

Absent 1

Floor Assignment Human Services

If the vote is on an amendment, briefly indicate intent:

Hackman

REPORT OF STANDING COMMITTEE (410)
February 12, 2009 4:16 p.m.

Module No: SR-28-2588
Carrier: Heckaman
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2237, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING).
Engrossed SB 2237 was placed on the Eleventh order on the calendar.

2009 HOUSE HUMAN SERVICES

SB 2237

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2237**

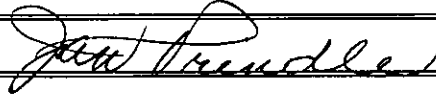
House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: **9 March 2009**

Recorder Job Number: 10476

Committee Clerk Signature



Minutes:

Chairman Weisz opened the hearing of SB 2237.

Senator Tom Fiebiger, District 45, introduced the bill. I brought this forward at the request of constituent Susan Drenth. He read her written testimony. **(Attachment 1)**

Chairman Weisz: Do you know how states currently track this besides AZ?

Senator Fiebiger: I think NC—I think the Secretary of State may be able to answer that.

Al Jaeger, Secretary of State, testified in favor of the bill. **(Attachment 2)** By the end of the year we will have technology in place that would allow for scanning of the documents and placing them out on the internet in a secure environment where they could be accessed in the rural areas. It is a concept that we had given some thought too. We have been involved in the drafting of the bill. The two states are NC and AZ.

Chairman Weisz: As far as other states or medical professionals recognizing this, are they going to know what to look for? Will they understand the system we have?

Secretary Jaeger: I would suspect that if they have the card and go to the web site there is a secure code so they would become aware that we have something like this. I would suspect with the sophistication of the medical profession if a person has a card they will understand or will become aware of what it is for. One of the things we learned on the Senate side is that in

a sense this is putting on record something that might be called a living will. This is a directive and so it would be available out there. As has been testified it has worked for the snowbirds in AZ. I don't see that as a problem.

Chairman Weisz: So if you are in KS, I go to my attorney and get a health care directive drawn up then they would give me a form to register myself—it wouldn't be mandatory but that would be the hope.

Secretary Jaeger: This would be a public service a non revenue thing. There will be a fee but it would not offset the development costs or anything like that. There are other things we do in our office where the fees cover our costs. We believe that once the program is set up that our continuing maintenance of it will just flow in because our whole system will be set up for scanning documents.

Representative Uglem: My first thoughts when I see this is are we duplicating efforts? There is a move on to make all your medical records available electronically through your primary physician. I would suspect this would be in those records.

Secretary Jaeger: I really don't of those other efforts. The fact that it has come forth and the fact that exists in these states—there must be a need for it in some manner. You have a valid question but I don't have a broader viewpoint. In the two states that have it it seems to be working well.

Representative Porter: The scanning of the files and receiving the information, in today's world of technology would you see that as your responsibility or the individual's responsibility to get it to you in the proper format to go into the registry?

Secretary Jaeger: Whatever is given to us we would put in. We are not going to go out and ask people for it. It is something that has to be initiated on their end to come to us.

Representative Porter: Are you going to be flooded with paper or computer discs or attachments to emails or something of that sort that would make this a paperless system.

My vision of this would be that you would receive it electronically and that would attach. . . .

Secretary Jaeger: Clara Jenkins on the management team in my office has done a lot research on this and perhaps she would respond to that question.

Clara Jenkins, director of business systems and programs, Sec of State: Typically these types of documents are notarized and we are anticipating that the majority of the submissions that we receive will be paper format because we do not have electronic notarization yet. I don't know if we will be able to accept an electronic document instead of the actual notarized paper form. We would scan in the original paper document and return the original document with the wallet card that had the instructions, password, and access code on it. We would then return that back to the submitter.

Secretary Jaeger: With our new web based system if we get to the point you are referring to, businesses are going to be able to file their annual reports on line, we'll be able to accept articles of incorporation and all of that on line but they don't require a notarial act. We expect in the next legislative session we will be coming forward with that type of thing.

Representative Frantsovog: Are you aware of any health care directives in other states that might be under some other name or public or private sponsorship other than the ones in the two states you mentioned? In other words is this competing with some other project or some other method of doing this in other states?

Secretary Jaeger: I don't know. We can't use living will. There must be some standard language out there someplace for this type of document because as was referred to this is a kind of life type thing so there must be some kind of common terminology.

Christopher Dodson, ND Catholic Conference, testified in favor of the bill. When we met as a task force this idea was discussed. Similar things have been done at smaller levels.

Depository was the word used. There was support for the idea. He distributed their health care directives and the guide that goes with it. **(Attachment 3)** As part of the process we do workshops with secular groups and one of the most common questions we get is “what do I do with this thing?” We are hoping that we could use some kind of depository system. How does this relate to putting medical records on line?--A health care directive is not a medical document. As this is implemented a number of us will work with the Sec of State. We hope to make this process as simple as possible. The main purpose for the directive is so that people feel more comfortable with decisions they make.

Representative Frantsvog: My question was the term health care directives—is there someplace else around the country where this same process is taking place.

Dodson: There was a company that was soliciting these some years ago. On the legitimate end, there have various groups that tried this in different ways. The most successful way was the Secretary of State process in AZ.

Representative Porter: Has there ever been a movement to do a uniform law related to this topic so that everything is in the same form across all fifty states?

Dodson: That has been discussed at the congressional level. They do not agree on what a form would like as it reflects certain philosophical views. Very few states have adopted a standardized form.

Linda Johnson Wurtz, associate state director, AARP, testified in favor of the bill.

(Attachment 4)

Dean Haas, representing the ND Medical Association, testified in favor of the bill.

(Attachment 5) He provided the Committee with an advance health care resource guide.

(Attachment 6)

Secretary of State Al Jaeger: The reason our office is a good place for this to be is because we are an office of record. We have a central system in place to be an office of record.

There was no testimony in opposition of the bill. Chairman Weisz closed the hearing of SB 2237.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2237

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: March 11, 2009

Recorder Job Number: 10767

Committee Clerk Signature

Vicky Crabtree

Minutes:

Chairman Weisz: Let's take up 2237. I have some concerns with liability so I did visit with the hospitals on this. My concern was that if somebody does a health directive to the Secretary of State and they get the ID card or whatever and then the hospital makes a decision based on the card and then the next day the spouse or kid shows up and says, whoa please delay this. I was assured to me that there was absolutely no liability issue. It was okay because that was the most recent one they had access to.

Rep. Pietsch: So before you pay your \$10 make sure that is what you want.

Chairman Weisz: Committee what do you want to do?

Rep. Conrad: I'm impressed in the fiscal note where they state in the first year of operations, North Carolina had 250, that's all and a \$100,000. Each one has to be entered. We'd have to scan each one. I'm thinking this is a \$100,000 you may want to spend someplace else.

Rep. Pietsch: It's the software they are buying for \$100,000.

Chairman Weisz: They aren't buying it; they have to reprogram what they have to do it.

Rep. Pietsch: It's not going to be long and we will all be digital, you know that. So maybe \$100,000 is better invested now than \$250,000 two years from now.

Rep. Conrad: I have no clue.

Rep. Frantsvog: The state's comments were, this is cutting edge; eventually it is going to happen anyway, we may as well be out in front on it.

(Much discussion back and forth about people soft software.)

Rep. Holman: Motion a Do Pass.

Rep. Porter: Second.

Rep. Conklin: Wasn't there something mentioned about a \$10 fee?

Chairman Weisz: Yes, they pay a \$10 fee when they register their healthcare directive.

Rep. Conklin: Maybe the \$10 fee would detract people from doing it.

Chairman Weisz: I would guess anyone that deals healthcare directives would encourage people to do this.

Roll Call Vote: 8 yes, 2 no, 3 absent, Rep. Damschen, Hofstad and Potter.

MOTION CARRIED DO PASS REREFERRED TO APPROPRIATIONS.

BILL CARRIER: Rep. Porter.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2237

House Human Services Committee

☐ Check here for Conference Committee

Hearing Date: April 1, 2009

Recorder Job Number: 11619

Committee Clerk Signature

Vicky Crabtree

Minutes:

Chairman Weisz: Let's take up 2237 the Health Registry with Secretary of State.

Appropriations didn't think much of it, but the Secretary of State is a little passionate about it.

So I told him if you want to spend (inaudible) just find the money. They agreed to send it back.

I haven't had a chance to look through the amendments but supposedly this gives them the ability to find the money. On page 1, line 13, change "shall" to "may". It's not mandatory, if they don't find the money they don't have to do it. Then go to page 3 (talked low). **See attached amendments #1.**

Rep. Conklin: What happens if we don't pass the amendment? Does it go back to the floor as is?

Chairman Weisz: If we don't do anything it would have to be re-referred to Appropriations because the appropriations is still in there even though the deadline would be (drops sentence). We'd be just sending it right back down there.

Rep. Porter: Motion to move amendment.

Rep. Pietsch: Second.

Chairman Weisz: I think the feeling was that (something about cutting the price down because they were the first ones) and they would be able to market that (inaudible) the state and a

feeling that possibly the Dakota Medical Foundation might (inaudible) the money if it was within \$25,000-\$30,000 or something of that nature. If they can find the funds and do the (inaudible).

Voice vote: Motion Carried on amendment.

Rep. Hofstad: Move a Do Pass as Amended.

Rep. Kilichowski: Second.

Chairman Weisz: Before we go down this road does someone want to make a motion to reconsider?

Rep. Kilichowski: Motion to reconsider SB 2237.

Rep. Conrad: Second.

Voice Vote: Motion Carried.

Roll Call for Do Pass as amended: 13 yes, 0 no, 0 absent.

MOTION CARRIED.

BILL CARRIER: Rep. Porter.

Date: 3-11-09

Roll Call Vote #:

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2237

House HUMAN SERVICES

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

☒ Do Pass

☐ Do Not Pass

☐ Amended

Motion Made By

Rep. Holman

Seconded By

Rep. Porter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD		✓
REP. CHUCK DAMSCHEN	A		REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTSVOG	✓		REP. ROBERT KILICHOWSKI		✓
REP. CURT HOFSTAD	A		REP. LOUISE POTTER	A	
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	✓				

Total (Yes)

8

No

2

Absent

3

Bill Carrier

Rep. Porter

If the vote is on an amendment, briefly indicate intent:

Do Pass

ReRefer to Approp

REPORT OF STANDING COMMITTEE

SB 2237, as engrossed: Human Services Committee (Rep. Welsz, Chairman) recommends **DO PASS** and **BE REREFERRED** to the Appropriations Committee (8 YEAS, 2 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2237 was rereferred to the **Appropriations Committee**.

Date: _____
Roll Call Vote #: /

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2237

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ **Do Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By Rep. Kilichowski Seconded By Rep. Conrad

[illegible]

Total (Yes) 13 No 0

Absent 0

Bill Carrier

If the vote is on an amendment, briefly indicate intent:

Reconsider
Bill
Motion Carried

VR
4/1/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2237

Page 1, line 2, replace "; to provide an appropriation; and to provide an" with a period

Page 1, remove line 3

Page 1, line 13, replace "shall" with "may"

Page 3, line 4, after "to" insert "establish," and after "Any" insert "funds contributed under this subsection and any"

Page 3, line 5, replace "chapter" with "section"

Page 3, remove lines 9 through 14

Renumber accordingly

Roll Call Vote #: 2 Date: _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2237

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Rep. Porter Seconded By Rep. Nietsch

[illegible]

Total (Yes) 12 No 0

Absent 12

Bill Carrier

If the vote is on an amendment, briefly indicate intent:

move
amendment

Date: 4-1-09
Roll Call Vote #: 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2237

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Rep. Hofstad Seconded By Rep. Kilichowski

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REP. TOM CONKLIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
VICE-CHAIR VONNIE PIETSCH	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REP. KARI L CONRAD	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REP. CHUCK DAMSCHEN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REP. RICHARD HOLMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REP. ROBERT FRANTSVOG	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REP. ROBERT KILICHOWSKI	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REP. CURT HOFSTAD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REP. LOUISE POTTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
REP. MICHAEL R. NATHE	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
REP. TODD PORTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
REP. GERRY UGLEM	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

Total (Yes) 13 No 0

Absent 0

Bill Carrier Rep Porter

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2237, as engrossed: Human Services Committee (Rep. Welsz, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2237
was placed on the Sixth order on the calendar.

Page 1, line 2, replace "; to provide an appropriation; and to provide an" with a period

Page 1, remove line 3

Page 1, line 13, replace "shall" with "may"

Page 3, line 4, after "to" insert "establish," and after "Any" insert "funds contributed under this subsection and any"

Page 3, line 5, replace "chapter" with "section"

Page 3, remove lines 9 through 14

Renumber accordingly

2009 HOUSE APPROPRIATIONS

SB 2237

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2237

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: March 19, 2009

Recorder Job Number: 11235

Committee Clerk Signature

Nancy L. Gerhardt

Minutes:

Rep. Weisz is a very simple bill. You will either love it or hate it. This bill will establish a registry within the Secretary of State's office. If you register a directive, they will put you in a database and send you a card with a password directly assigned to you. If you are in an accident, the card will bring up your healthcare directive and know what your wishes are in regards to end of life care. \$100,000 is for the software that will be needed. A fee will be charged (\$15). This is voluntary to do the directive. Any time you go anywhere you are supposed to have a directive on you so that medical personnel would know what to do. This is one-time funding.

Chm. Svedjan: (3:32) We talked about this earlier this morning. For those of us who have drafted a healthcare directive, we are instructed to provide a copy to our attorney, spouse, etc. That process seems to work well. Given that the system works fairly well right now, is this an example where we are doing something because we can, not because we have to?

Rep. Weisz: I guess you could say that. It's a matter of convenience. The medical community did testify that this would be helpful.

Chm. Svedjan: Would part of the \$100,000 be used to inform and educate health care providers as to its availability and access?

Rep. Weisz: No. It's strictly for software.

Rep. Delzer: (7:57) Does someone go through someone's personal effects to find this card?

Rep. Weisz: The medical community is obligated to find the directive if they are aware that there is one.

Rep. Wald: This is a program where it sounds like a good idea, and next session they will be here requested an FTE. It looks to me that we are starting a new program. I think this is an individual responsibility. I move a Do Not Pass.

Rep. Klein: 2nd.

Chm. Svedjan: Any further discussion? That was for a Do Not Pass.

Rep. Meyer: How long do you have before you are put on life support before or a feeding tube? Is there a time limit?

Rep. Weisz: They medical community will do whatever they can to save your life. Until they know something different, they will do whatever they can. But, if they are aware of a medical directive.

Rep. Meyer: If you have a "Do not resuscitate" and they can't find it, can they remove the tube after they find this?

Rep. Weisz: The medical personnel are going to do what they can. There's not a time limit per se.

Chm. Svedjan: I think it's fair to say there is no foolproof method. If you're out of state or out of town, that presents a problem. What is to say someone would call the Secretary of State.

Rep. Weisz: They would not call the Secretary of State. They would see the card and go online. If a family member says I know they have a health care directive they will go through the normal procedure.

Rep. Delzer: Is there anything that keeps people from printing their own card and put it in the wallet now?

Rep. Weisz: That doesn't tell them anything.

Rep. Delzer: They could type that in and say where the directive is.

Rep. Weisz: They could have a card saying "Please contact Joe Blow for my health care wishes."

Rep. Hawken: Is there the potential to use a system of this nature for other health related issues?

Rep. Weisz: No. This is outside of HIPAA.

Rep. Skarphol: This sounds like a great idea for Blue Cross Blue Shield to do.

Rep. Wald: I carry a military dog tag in my wallet. If I'm in an accident, they can get some information on me. I think this is a matter of individual responsibility.

Chm. Svedjan: We have a Do Not Pass motion from Rep. Wald and a 2nd from Rep. Klein.

Discussion? Seeing none we will take a roll call vote for a Do Not Pass on SB 2237.

Vote: 19 Yes 5 No 1 Absent Carrier: Rep. Wald Motion carries.

Date: 3/19/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2237

Full House Appropriations Committee

☐ Conference Committee

Legislative Council amendment Number

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ As Amended

Motion Made By: Wald Seconded By: Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Rep. Skarphol	✓		Rep. Kroeber		✓
Rep. Wald	✓		Rep. Onstad		✓
Rep. Hawken	✓		Rep. Williams		✓
Rep. Klein	✓				
Rep. Martinson	✓				
Rep. Delzer	✓		Rep. Glassheim	✓	
Rep. Thoreson	✓		Rep. Kaldor	✓	
Rep. Berg	✓		Rep. Meyer	✓	
Rep. Dosch	✓				
Rep. Pollert	✓		Rep. Ekstrom		✓
Rep. Bellew	✓		Rep. Kerzman		✓
Rep. Kreidt	✓		Rep. Metcalf	✓	
Rep. Nelson	✓				
Rep. Wieland	✓				

Total Yes 19 No 5

Absent 1

Floor Assignment: Wald

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 19, 2009 3:59 p.m.

Module No: HR-50-5422
Carrier: Wald
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2237, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman)
recommends **DO NOT PASS** (19 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2237 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2237

**Testimony of Susan E. Johnson-Drenth, J.D., CELA
Before the Senate Human Services Committee
On SB 2237**

*Same
testimony +
handwritten given
to House.*

Madam Chairwoman and members of the committee, my name is Susan Johnson-Drenth, an attorney with the Vogel Law Firm. I am also the chair of the North Dakota State Bar Association Elder Law Section and I am the only Certified Elder Law Attorney in North Dakota. Prior to practicing law, I worked as a Registered Nurse for ten years in various intensive care units, with my last employment as a Registered Nurse in the cardiac intensive care unit at MeritCare Hospital in Fargo. I give you my background information to help you understand my passion for empowering individuals with the knowledge and ability to create a proper Health Care Directive and to have the terms of the Health Care Directive honored by their treating physicians and health care institutions.

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. Additionally, a Health Care Directive allows an individual to state their wishes regarding important end-of-life decisions, such as the use of a ventilator, tube-feeding and intravenous hydration, as well as their wishes for organ and tissue donation.

Once the Health Care Directive is properly signed, a copy of it should be provided to the attending physician for placement in an individual's medical chart. However, with our increasingly mobile society and the large number of individuals, especially retirees, that travel south for the winter, there is a great concern about the portability of the Health Care Directive document. Some individuals keep a copy in their glove box or suitcase. Many forget to bring it on their travels entirely.

Thus, the benefit of the proposed Health Care Directive Registry Bill. This Bill is based on the Arizona model¹, which is administered by the Arizona Secretary of State's office. I have had the pleasure of using the Arizona Health Care Directive Registry since its inception in 2004 for my clients who have an Arizona address.

Here is how the Health Care Directive Registry is proposed to work in North Dakota:

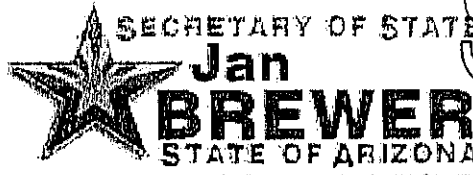
- Step 1: Properly complete and sign a Health Care Directive.
- Step 2: Fill out the prescribed form supplied by the Secretary of State (see attached for a specimen of the Arizona form).
- Step 3: Provide a copy of the Health Care Directive and the prescribed form to the North Dakota Secretary of State's office with a \$10.00 fee.
- Step 4: The Secretary of State will scan the Health Care Directive document itself into their database and provide the individual with a wallet card which has the website address for access and a confidential file number and password unique to the individual.
- Step 5: Present the wallet card to your health care providers as needed, who will then enter the website address on the computer and enter your file number and password.
- Step 6: The health care provider may then see the Health Care Directive on their computer screen and print it off, no matter where in the world the individual may be.

¹ The website for the Arizona Secretary of State Advanced Directive site is www.azsos.gov/adv_dir/.

The portability of a Health Care Directive with a wallet card from the Health Care Directive Registry is a wonderful addition to our current Health Care Directive statute and will provide an option for individuals to travel away from their primary health care provider with confidence that the contact information for their health care agents and their end-of-life wishes are only a computer "click" away.

For these reasons, I strongly urge a DO PASS recommendation for SB 2237.

I am available for any questions the committee may have. Thank you.



SPECIMEN

Arizona Health Care Directives Registry Registration Agreement

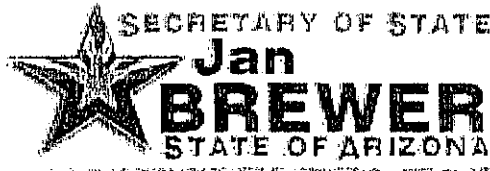
Instructions

- Read this Agreement carefully, and fill in all the blank spaces.
- Attach a copy of your witnessed or notarized Health Care Directive to this Agreement (**DO NOT** send your original Health Care Directive Form)
- Sign and date this Agreement and return in person or by mail to:
Arizona Health Care Directives Registry
Arizona Secretary of State
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

Last Name	First Name	Middle Name or Initial
Address		Phone
City	State	Zip
Birth Date (Month/Day/Year)	Social Security Number (Last 4 digits is acceptable or Driver's Lic. #)	
Printed name as you want it listed on your membership card		
Address to return documents and wallet card (IF DIFFERENT FROM ADDRESS ABOVE)		
Name		
Address		
City	State	Zip
Your registration form will be processed within three (3) weeks. You will receive further information in the mail. In order to complete the registration of your health care directive(s) you are required to reply to the letter that you will receive.		
For further assistance please contact the Arizona Secretary of State at (602) 542-6187 or visit us online at: www.azsos.gov		

OVER

Updated 05-20-2009



SPECIMEN

Registration Agreement

I am providing this personal information, along with a copy of my advance directive, with the understanding that this information will be stored in the Arizona Health Care Directive Registry. I certify that the advance directive that accompanies this Agreement is my currently effective advance directive, and was duly executed, witnessed and acknowledged in accordance with the laws of the State of Arizona.

I want to:

- ☐ Store a health care directive(s) in the Registry
- ☐ Replace a health care directive(s) now in the Registry with a new one
- ☐ Add an additional document to my currently stored directive(s)
- ☐ Remove my health care directive(s) from the Registry
- ☐ Request a replacement wallet card (no change to health care directive(s) in Registry)
- ☐ Change Registration Agreement Information

New Address: _____

Other: _____

I understand that the Arizona Health Care Directive Registry is hosted by MyHealthDirective.com and is the responsibility of the Arizona Secretary of State. I authorize the Arizona Secretary of State, or designated agent, to share my personal information with MyHealthDirective.com for the purpose of storing my health care directive in the Registry and receiving payment for this service.

I understand this authorization is voluntary. This authorization to store my advance directive in the Arizona Health Care Directives Registry will remain in force until revoked by me. I understand that I may revoke this authorization at any time by giving written notice of my revocation to the Contact Office listed below. I understand that revocation of this authorization will NOT affect any action you took in reliance on this authorization before you received my written notice of revocation.

Contact Office: Office of the Arizona Secretary of State
Telephone: 602-542-6187 **Fax:** 602-542-4366 **E-mail:** AD@azsos.gov
Address: 1700 W. Washington Street, 7th Floor, Phoenix, AZ, 85007

Signature of person completing this Agreement

Date

Printed Name

OVER



William L. Guy III

Attorney at Law

Phone: 218.236.6462 | Fax: 218.236.9873 | wguy@vogellaw.com

January 26, 2009

Senator Judy Lee, Chair
Health and Human Services Committee
North Dakota Legislature

Dear Senator Lee:

I am writing in support of Senate Bill No. 2237 that would enact a new chapter to title 23 thereby establishing a health care record registry in the office of the Secretary of State.

This legislation would enable an individual (or their agent) to file a health care directive (or revocation of that document) with the Secretary of State. Doing so will enable the Secretary of State to maintain a database of health care directives (and revocations of them) which will be accessible by entering the file number of the filed document and a password on the Secretary of State's internet website.

The proposed system is quite similar to that which has been in use in the state of Arizona for some time. A registry such as this one enables those who either reside in this state (or are here as visitors for an extended period of time) to have easy access to their health care directive from any location in the nation. Thus, North Dakota residents who are traveling and are in need of their health care directives can obtain copies from the website maintained by the Secretary of State (without having to carry the document with them as they travel).

Finally, the proposed filing fees should offset much of the cost of creating and maintaining the system while not being burdensome to its users.

My partner, Susan Johnson-Drenth, who is a Certified Elder Law Attorney, and I have reviewed the proposed statute carefully and believe that its enactment would be of great value to the state of North Dakota and its citizens.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Bill Guy'.

William L. Guy III

WLG:asb

734495.1

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.nd.gov/sos



SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

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January 27, 2009

TO: Senator J. Lee, Chairman, and Members of the Senate Human Services Committee

FR: Al Jaeger, Secretary of State

RE: SB 2237 – Health Care Record Registry

For the past several years, the Secretary of State's office has been considering the type of registry that would be established by this bill. We know of its existence in the Secretary of State's office in the states of Arizona and North Carolina.

However, because of the agency's existing software platforms, it was not feasible to pursue. The agency is now in the process of developing new software, which is scheduled to be launched before the end of 2009. Since the new software is web-based, it is now possible for the agency to consider creating such a registry.

To accomplish this, two things are needed, which are reflected in the attached amendment.

First, in order to have sufficient time to develop the necessary software for the registry, the agency is asking the effective date of this act to be July 1, 2010.

Second, in order to develop the software, it is estimated that it would cost up to \$100,000. The agency does not have those funds in its budget and this amendment provides for the necessary appropriation.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2237

On page 1, line 2, after the comma, insert:

“; to provide an effective date and to provide an appropriation,”

On page 3, line 2, after the period insert:

“Any fees collected under this chapter must be deposited in the secretary of state's general services operating fund.”

On page 3, after line 5, insert:

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 2010.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the secretary of state for the purpose of establishing the health care record registry, for the biennium beginning July 1, 2009, and ending June 30, 2011.”



SB 2237
Senate Human Services Committee
January 27, 2009

Chairman Lee and members of the Senate Human Services Committee. I am Linda Johnson Wurtz, Associate State Director for Advocacy for AARP North Dakota. I represent our nearly 88,000 North Dakota members.

AARP North Dakota supports establishing a health care record registry for North Dakotans. With the creation of an accessible and user-friendly online service, and adequate consumer education, the registry could provide a safe and confidential place to store advance directives and yet always have access to those records.

For those individuals who have advance directives, the registry will provide portability and peace of mind.

Thank you.



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Immediate Past President

Bruce Levi
Executive Director

Dean Haas
General Counsel

Leann Tschider
Director of Membership
Office Manager

Annette Weigel
Administrative Assistant

**Testimony in Support of SB No. 2237
Senate Human Services Committee
January 27, 2009**

Madam Chair Lee and Committee Members. I'm Bruce Levi and I represent the North Dakota Medical Association.

SB No. 2237 would create a health care record registry. Upon completing a health care directive, many people ask "what shall I do with my health care directive?" We typically respond:

"You should keep your original document in a place that is easy to find in the event you should become unable to make or communicate decisions. You should provide a copy of your health care directive to your physician and any other health care providers such as your hospital, nursing facility, hospice or home health agency. In addition, you may want to give copies of your health care directive to other persons, such as close family members and your attorney, if you have one. A copy of a health care directive is generally presumed to be a true and accurate copy of the original."

SB No. 2237 is a logical next step in the efforts we have made these past two legislative sessions to provide North Dakotans with good tools to assist them in advance care planning by facilitating secure, yet readily accessible, electronic health care directives.

Subdivision c of subsection 5 of the bill provides parameters for physician assurance that physician reliance on such a registry, or non-reliance, does not result in liability exposure.

On behalf of NDMA, we urge a "Do Pass" on SB No. 2237.

**Vision**

The North Dakota Healthcare Association will take an active leadership role in major healthcare issues.

Mission

The North Dakota Healthcare Association exists to advance the health status of persons served by the membership.

Testimony on Senate Bill 2237
Senate Human Services Committee
January 27, 2009

Senator Lee, Members of the Senate Human Services Committee, I am Arnold Thomas, President of the North Dakota Healthcare Association. I am here in support of SB 2237.

We think SB 2237 expands access by providers to organ donation and end of life decisions of a person. Creating a voluntary centralized State registry is an additional step a person may take in making their decisions known about end of life matters.

We ask for a "Do Pass" on SB 2237.

ALVIN A. JAEGER
SECRETARY OF STATE

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#2

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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

March 9, 2009

TO: Rep. Weisz, Chairman, and Members of the House Human Services Committee

FR: Al Jaeger, Secretary of State

RE: SB 2237 – Health Care Record Registry

For the past several years, the Secretary of State's office has been considering and researching the type of health care record registry this bill would create. We think it would perform a valuable public service. Such a registry already exists in the Secretary of State's office in the states of Arizona and North Carolina.

However, because of the agency's existing software platforms (AS/400 and Mainframe), it was not a feasible project to pursue. That problem will be eliminated because the agency is now in the process of developing new software, which is scheduled to be launched before the end of 2009. The new software is web-based, which will make it possible for the agency to create the health care record registry proposed by this bill.

To accomplish this, the bill includes the following two items.

Section 2: To develop the software and the necessary support infrastructure, it is estimated the project will cost \$100,000, which amount is appropriated in this section of the bill.

Section 3: To have adequate time to develop the necessary software for the health care registry, the law has a delayed effective date, which is July 1, 2010.

A Guide to Health Care Directives

A Resource from the North Dakota Catholic Conference

#3

Health Care Directives give instructions for future health care decisions. To assist people who wish to have a health care directive, the North Dakota Catholic Conference has prepared a Catholic Health Care Directive that meets the state's legal requirements, expresses Church teaching, and reflects the recommendations of church, health care, and community leaders. This Guide answers some basic questions about the law, Church teaching, and completing a health care directive.

What do all these terms mean?

A “**living will**” usually means a document in which a person states *only* his or her health care wishes. A “**durable power of attorney for health care**” usually means a document in which a person appoints someone to make health care decisions on his or her behalf. “**Advance directive**” usually means a living will, a durable power of attorney for health care, or a combination of the two. “**Health care directive**” is what North Dakota state law calls any advance directive. A “**health care agent**” is what state law calls the person appointed through a health care directive to make health care decisions for another.

Why would I want a health care directive?

A health care directive can help make sure that your health care wishes are followed when you cannot speak for yourself. In addition, a health care directive can help your family and friends during what may be a difficult time.

What happens if I don't have a health care directive?

In North Dakota, if you have not appointed a health care agent and you are unable to make or communicate health care decisions, state law determines who makes health care decisions for you. The law authorizes persons in the following categories, *in the order listed*, to make decisions: your health care agent unless a court specifically authorizes a guardian to make decisions for you, your court-appointed guardian or custodian, your spouse, any of your children, your parents, your adult brothers and sisters, your grandparents, your

adult grandchildren, and an adult friend or close relative. No one in a lower category may make the decision if someone in a higher category has refused to consent.

When making a health care decision, the authorized person must determine whether you would consent to the care if you were able to do so. If the person is unable to make this determination, he or she may only consent to the proposed health care if it is in your best interests.

Do I need to use a special form?

No. North Dakota law has an *optional* health care directive form, but many other forms exist that meet the state's legal requirements. In fact, you do not have to use a pre-printed form.

Any written statement that meets these requirements is valid in North Dakota:

- States the name of the person to whom it applies;
- Includes a health care directive, the appointment of an agent, or both;
- Is signed and dated by the person to whom it applies or by another person authorized to sign on behalf of the person to whom it applies;
- Is executed by a person with the capacity to understand, make, and communicate decisions; and
- Contains verification of the required signature, either by a notary public or by qualified witnesses.

If you are Catholic, the North Dakota Catholic Conference suggests that you use the *Catholic Health Care Directive* form. If the form is not included with this document, you can get one by calling the conference at 1-888-419-1237 or by downloading it at ndcatholic.org.

Do I need an attorney? What will this cost?

No. It is not necessary to have an attorney provide or fill out the form. However, you should contact an attorney if you have legal questions regarding advance care planning. Health care directive forms are available at no cost from a number of sources, including the North Dakota Catholic Conference.

Should I appoint a health care agent or just write down my wishes?

The North Dakota Catholic Conference recommends that your health care directive include the appointment of a health care agent.

Written instructions alone are only as good as your ability to accurately predict every possible future medical condition and every future medical treatment option. This is an almost impossible task. In addition, without a health care agent, the person interpreting those instructions might be someone who does not truly know what you wanted.

By appointing a health care agent, you can make sure that someone who cares about you will apply your wishes and personal beliefs to the health care choices at hand – just as you would do. Even if you appoint a health care agent, you can still give written health care instructions to direct, guide, and even limit the actions of your agent.

Why does the hospital always ask if I have a living will? Do I have to have one?

Federal law requires health care providers to ask you if you have an advance directive. By habit, they often use the term “living will.” You are not required to have any advance directive and you do not have to use the form they provide.

Who can be my health care agent?

In North Dakota, your agent must be 18 years of age or older and must accept the appointment in writing. Talk beforehand to the person you wish to appoint. Find out if the person is willing to accept the responsibility. Tell the person about your wishes and preferences for care. Be sure the person is willing and able to follow your wishes.

I already have an advance directive. Do I need to do a new one? What if I want a new one?

Valid advance directives completed under the old law (before August 1, 2005) will still be honored. *Validly executing a new health care directive automatically revokes any older advance directive.* Inform everyone who might have a copy of that old document that it is no longer valid and that you have a new health care directive.

On health care directive forms, who is the “principal,” “declarant,” and “agent?”

You, the person executing a health care directive, are the “principal.” When verifying your identity before a witness or notary public, you are also the “declarant.” The person you appoint as your health care agent is the “agent.”

Will an advance directive that I completed in another state be accepted in North Dakota?

Yes, so long as it complies with the laws of that state and is not contrary to certain North Dakota laws, such as the law against assisted suicide.

Will a health care directive that I completed in North Dakota be accepted in another state?

Most states have reciprocity statutes that give recognition to advance directives completed in other states. Even if a health care directive completed in North Dakota does not meet some of the technical requirements of another state's law, the directive should still be followed since it expresses the your wishes.

What should I do with my health care directive?

Provide a copy of your health care directive to your doctor and any other health care providers such as your hospital, nursing facility, hospice, or home health agency. In addition, you may want to give copies of your health care directive to other persons, such as close family members, your priest, and your attorney, if you have one.

What fundamental principles should guide a Catholic, and indeed any person, who is thinking about health care decisions?

1. *Human life is a precious gift from God.* This truth should inform all health care decisions. Every person has a duty to preserve his or her life and to use it for God's glory.
2. *We have the right to direct our own care and the responsibility to act according to the principles of Catholic moral teaching.* Each person has a right to clear and accurate information about a proposed course of treatment and its consequences, so that the person can make an informed decision about whether to receive or not receive the proposed treatment.
3. *Suicide, euthanasia, and acts that intentionally and directly would cause death by deed or omission, are never morally acceptable.*
4. *Death is a beginning, not an end.* Death, being conquered by Christ, need not be resisted by any and every means and a person may refuse medical treatment that is *extraordinary*. A treatment is extraordinary when it offers little or no hope of benefit or cannot be provided without undue burden, expense, or pain.
5. *There should be a strong presumption in favor of providing a person with nutrition (food) and hydration (water), even if medically assisted.* Providing nutrition and hydration should be considered ordinary care since it serves a life-preserving purpose and the means of supplying food and water are relatively simple and - barring complications - generally without pain. Exceptional situations may exist in which this is not the case, such as when a person is no longer able to assimilate nourishment, or when death is so imminent that withholding or withdrawing food and water will not be the actual cause of death. In no case should food or water be removed with the intent to cause death.
6. *We have the right to comfort and to seek relief from pain.* Although our faith teaches that we can find meaning in suffering, no one is obligated to experience pain. A person has a right to pain relief and comfort care, even if the method or treatment *indirectly* and *unintentionally* shortens life. However, it is not right to deprive the dying person of consciousness without a serious reason.

Is this all there is to know about making ethical health care decisions?

No. These statements are only some basic principles. Some situations, such as pregnancy or organ donation, involve other principles. Understanding and applying these principles to specific cases can be difficult. At times, your bishop or the Pope may provide clarification on the Church's teaching and guidance for specific situations.

For additional resources and information on making ethical health care decisions, contact:

Fargo Diocese Respect Life Office
(701-356-7910)

web site: www.fargodiocese.org

Bismarck Diocese Pastoral Center
(701-222-3035)

North Dakota Catholic Conference
(1-888-419-1237; 701-223-2519)

web site: ndcatholic.org

How can I make sure that decisions made on my behalf are consistent with my Catholic beliefs?

State in your health care directive your desire to have all health care decisions made in a manner consistent with Catholic teaching. The *Catholic Health Care Directive* does this.

Appoint a health care agent who shares your beliefs or, at least, sincerely intends to respect your wishes.

If your health care agent is not familiar with Catholic teaching on these matters, give your agent the name of a priest or lay leader who can provide guidance. You can include the name and contact information of that person in the health care directive. You may also want to give this information to your health care provider.

Are Catholics morally obligated to have an advance directive?

No. However, a health care directive, especially one that appoints a health care agent, is one way to make sure that your care and treatment is consistent with the Catholic faith and your wishes.

Is organ donation morally acceptable? Can I include a donation in my health care directive?

Organ donation after death is a noble and meritorious act and is to be encouraged as an expression of generous solidarity. You should, however, give explicit consent. The *Catholic Health Care Directive* includes an optional section where you can give that consent.

My friend is not Catholic, but likes the Catholic Health Care Directive. Can she cross out the parts that would not apply to her?

Yes, she can. However, it might be a good idea to initial the changes. She can also contact the North Dakota Catholic Conference and we will send you a version of the form that retains the ethical principles in the Catholic Health Directive, but does not contain specific references to the Catholic faith.

How can I make sure my spiritual needs are met?

When you enter a hospital or nursing home, state that you are a Catholic and want to have a priest or lay minister care for your spiritual needs. Also state if you want to see a particular priest. Unless you have done this, certain privacy rules may prevent the hospital or nursing home from informing a priest about your presence or allowing him to visit.

If you cannot communicate your wishes when being admitted, your health care directive and health care agent can do this for you.

Include spiritual requests in your health care directive. The *Catholic Health Care Directive*, for example, includes a request for the Sacraments of Reconciliation, Anointing, and Eucharist as viaticum, if you are terminally ill. "Viaticum" literally means "food for the journey." Death is not the end. Rather, it is only a "passing over" from this world to the Father. In preparation for this journey, the Church offers Eucharist as viaticum, i.e., Christ's body and blood as food for the journey.

Have more questions?

Need copies of the Catholic Health Care Directive?

Visit the conference web site at: ndcatholic.org. The site includes more questions and answers, forms to download, and places to get more information.

You can also contact the North Dakota Catholic Conference:
701-223-2519
Toll-free at 1-888-419-1237
ndcatholic@btinet.net

A Catholic Health Care Directive

My Health Care Agent

I, _____, do hereby name and appoint _____

_____ as my health care agent. As my health care agent, this person can make health care decisions for me if I am unable to make and communicate health care decisions for myself.

If my health care agent is not reasonably available, I trust and appoint _____

_____ as my health care agent instead.

Health Care Agent Information

Name: _____

Address: _____

Phones: _____

Relationship: _____

Alternate Health Care Agent Information

Name: _____

Address: _____

Phones: _____

Relationship: _____

My Wishes

This is what I want my health care agent - or if I have no health care agent, whoever will make decisions regarding my care - to do if I am unable to make and communicate health care decisions for myself. Most of what I state here is general in nature since I cannot anticipate all the possible circumstances of a future illness. If I have not given specific instructions, then my agent must decide consistent with my wishes and beliefs.

As a Catholic, I believe that God created me for eternal life in union with Him. I understand that my life is a precious gift from God and that this truth should inform all decisions with regards to my health care. I have a duty to preserve my life and to use it for God's glory. Suicide, euthanasia, and acts that intentionally and directly would cause my death by deed or omission, are never morally acceptable. However, I also know that death, being conquered by Christ, need not be resisted by any and every means and that I may refuse any medical treatment that is excessively burdensome or would only prolong my imminent death. Those caring for me should avoid doing anything that is contrary to the moral teaching of the Catholic Church.

❖ Medical treatments may be foregone or withdrawn if they do not offer a reasonable hope of benefit to me or are excessively burdensome.

❖ There should be a presumption in favor of providing me with nutrition and hydration, including medically assisted nutrition and hydration, if they are of benefit to me.

❖ In accord with the teachings of my Church, I have no moral objection to the use of medication or procedures necessary for my comfort even if they may indirectly and unintentionally shorten my life.

❖ If my death is imminent, I direct that there be foregone or withdrawn treatment that will only maintain a precarious and burdensome prolongation of my life, unless those responsible for my care judge at that time that there are special and significant reasons why I should continue to receive such treatment.

❖ If I fall terminally ill, I ask that I be told of this so that I might prepare myself for death, and I ask that efforts be made that I be attended by a Catholic priest and receive the Sacraments of Reconciliation, Anointing, and Eucharist as viaticum.

Believing none of the following directives conflicts with the teachings of my Catholic faith or the directives listed above, I add the following directives: *(You do not need to complete this section. If you do, you can use an extra sheet, if needed.)*

Making an Anatomical Gift (Optional)

So long as it is consistent with Catholic moral teaching, I would like to be an organ and tissue donor at the time of my death. I wish to donate the following (initial one statement):

☐ Any needed organs and tissue.

☐ Only the following organs and tissue:

Your Signature (The person making this health care directive) **[This section must be completed.]**

I sign this Health Care Directive on _____ (date) at _____ (city),
_____ (state).

(you sign here)

If you have attached additional pages to this form, date and sign each of them at the same time you date and sign this form.

*To be valid, this health care directive must be **notarized** or **witnessed** when you sign. **If witnessed:** At least one witness must not be a health care or long-term care provider providing you with direct care or an employee of that provider.*

None of the following may be a notary or witness:

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

Acceptance of Appointment by Health Care Agent

I accept this appointment and agree to serve as a health care agent. I understand I have a duty to act in good faith, consistent with the desires expressed in this document, and that this document gives me authority to make health care decisions for the principal only when he or she is unable to make and communicate his or her own decisions. I understand that the principal may revoke this appointment at any time, in any manner. If I choose to withdraw during the time the principal is competent, I must notify the principal of my decision. If I choose to withdraw when the principal is not competent, I must notify the principal's physician.

(Signature of agent) (date)

(Signature of alternate agent) (date)

Option 1: To be Completed by a Notary Public

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

(Signature of Notary Public)

My commission expires _____, 20____.

Option 2: To be Completed by 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 person 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 person 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)



SB 2237
House Human Services
March 9, 2009

Chairman Weisz and members of the House Human Services Committee. My name is Linda Johnson Wurtz, Associate State Director for Advocacy for AARP North Dakota. I represent our 88,000 North Dakota members.

AARP North Dakota supports SB 2237. We encourage our members to make use of advance directives. They make critical medical and end of life decisions less stressful for the individual and for family members.

A health care registry such as the one proposed in SB 2237 is a part of a movement across the nation toward health information technology and is in answer to a more mobile society. Having easy access to those records while ensuring their safety provides travelers with peace of mind.

Should a registry be implemented in North Dakota, AARP North Dakota would be happy to assist in the education of North Dakotans as to its use and usefulness.

Thank you for your attention.

#5



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Annette Weigel
Administrative Assistant

**Testimony in Support of SB No. 2237
House Human Services Committee
March 9, 2009**

Chairman Weisz and Committee Members. I'm Dean Haas and I represent the North Dakota Medical Association.

SB No. 2237 would create a health care record registry. Upon completing a health care directive, many people ask "what shall I do with my health care directive?" We typically respond:

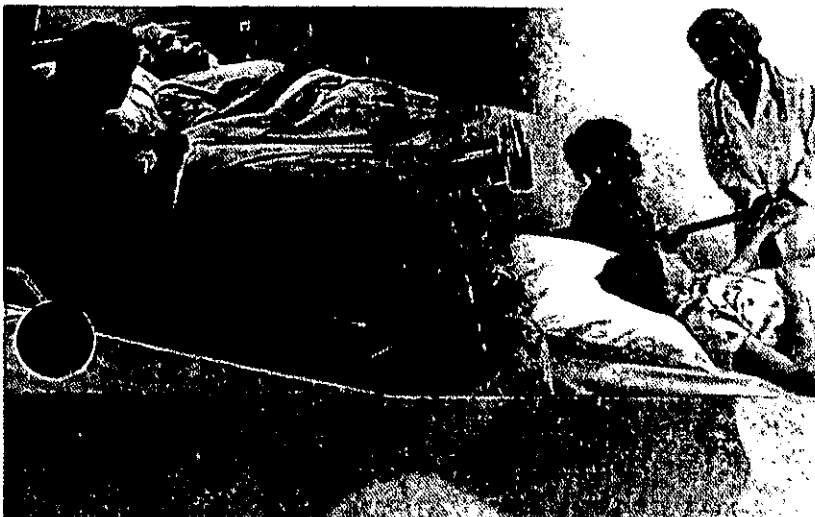
"You should keep your original document in a place that is easy to find in the event you should become unable to make or communicate decisions. You should provide a copy of your health care directive to your physician and any other health care providers such as your hospital, nursing facility, hospice or home health agency. In addition, you may want to give copies of your health care directive to other persons, such as close family members and your attorney, if you have one. A copy of a health care directive is generally presumed to be a true and accurate copy of the original."

SB No. 2237 is a logical next step in the efforts we have made these past two legislative sessions to provide North Dakotans with good tools to assist them in advance care planning by facilitating secure, yet readily accessible, electronic health care directives.

Subdivision c of subsection 5 of the bill provides parameters for physician assurance that physician reliance on such a registry, or non-reliance, does not result in liability exposure.

On behalf of NDMA, we urge a "Do Pass" on SB No. 2237.

Who
will speak
for you
if *You*
can't speak
for yourself?



ERRATA

There are changes in North Dakota law made by the 2007 North Dakota Legislative Assembly that impact this printing of the *Advance Health Care Planning Resource Guide for North Dakotans*.

The first change is on page 9. The following language should be added to the answer to the question: When does a health care directive become effective?

“As a result of legislation enacted by the 2007 ND Legislative Assembly, you may choose to authorize your health care agent to make health care decisions for you even if you still have the capacity to make those decisions (rather than only when you have become incapacitated). Under this option, the health care directive is effective under any conditions you may impose. You may also revoke this authorization as you would any other health care directive.”

The second change is on page 10. The answer to the last question on that page should be as follows:

“If I am being admitted to or am a patient in a hospital, are there any special requirements?”

“Previous law required that a person being admitted to a hospital, or a hospital patient, who appoints a health care agent to receive an explanation of the nature and effect of the appointment in order that the appointment be effective. A special form needed to be completed. However, the requirement was removed by the 2007 ND Legislative Assembly effective August 1, 2007.”

The third change is to the first question on page 11, with the following new answer:

“If I am a resident of a long-term care facility, are there any special requirements?”

“No. Previous law required that a resident of a nursing home or other long-term care facility who appoints a health care agent to receive an explanation of the nature and effect of the appointment in order that the appointment be effective. A special form needed to be completed. However, the requirement was removed by the 2007 ND Legislative Assembly effective August 1, 2007.”

The fourth change is the removal of the following portions of the optional form:

Remove the Principal's Statement on the bottom half of page 22.

Remove the entire page 23.

AARP

Association of Hospital Chaplains
Blue Cross Blue Shield of North Dakota
Dakota Medical Foundation
Guardian and Protective Services, Inc.
Hospice of the Red River Valley
Mental Health Association of North Dakota
National Association of Social Workers, ND Chapter
North Dakota Association for Home Care
North Dakota Association of County Social Workers
North Dakota Board of Medical Examiners
North Dakota Board of Pharmacy
North Dakota Catholic Conference
North Dakota Conference of Churches
North Dakota Department of Human Services
North Dakota Extension Service
North Dakota Health Care Review, Inc.
North Dakota Health Department
North Dakota Healthcare Association
North Dakota Hospice Organization
North Dakota Insurance Department
North Dakota Long Term Care Association
North Dakota Long Term Care Ombudsman
North Dakota Medical Association
North Dakota Newspaper Association
North Dakota Nurses Association
North Dakota Nursing Programs
North Dakota Office of Attorney General
North Dakota Pharmacists' Association
North Dakota Right to Life
State Bar Association of North Dakota
Evangelical Lutheran Good Samaritan Society
UND School of Medicine & Health Sciences

Several years ago, North Dakotans launched an effort called "Matters of Life & Death" to encourage everyone to talk about our wishes for health care when unable to make or communicate decisions for ourselves. Since that time, the Terri Schiavo story has taught us how important it is for everyone - whatever their age - to make their wishes known in advance.

There were no winners in the long and tragic legal battle involving Terri Schiavo. But her case can impact each of us for the better by spurring us into action to avoid similar scenarios in our own families.

Talking about our wishes for health care if we are unable to do so for ourselves is not just for older people or someone who is near death. Terri Schiavo was a young woman in seemingly good health. And, you may not be near the end of your life when you need someone to speak for you. Critical accidents or severe strokes, as examples, may diminish your ability to make or communicate decisions, even temporarily. Do your wishes in these situations differ from what your wishes might be if you were near death? Will a loved one or a health care agent you appoint be able to express your personal wishes?

Regardless of your age or health status, take the time now to think about and decide what kind of care you want in the event you are unable to make decisions for yourself. Don't be afraid to talk frankly with your spouse, family, clergy and doctor about your preferences. Remember, not talking can result in difficult challenges for those left to make decisions on your behalf.

Consider naming a health care agent - a person you name and trust who will make decisions for you if you cannot. Take time to fill out a health care directive document and consider all the possibilities or situations in which you may not be able to speak for yourself, even temporarily.

Now is the time to make your wishes known and complete a health care directive. Consider it a gift to yourself as well as your loved ones.

Led by the North Dakota Medical Association, the Matters of Life and Death Project involved a variety of organizations and individuals in North Dakota that made a concerted effort from 1999 to 2003 to improve end-of-life care in North Dakota. The organizations listed in the left column, among others, were involved in this effort.

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Having the most *important* conversation

Most of us know we *should* talk to a variety of people about our wishes for care when we can't speak for ourselves. It's just that, often, we *don't*. Yet, if we can document and discuss our wishes in advance, a conversation that once seemed scary can actually become comforting.

It really is OK to talk about dying. It *has* to be. Use this guide to help you start.

- Hold conversations about your wishes with family, health care providers and others who may be involved in your care.
- Document those wishes, in writing, by preparing a health care directive.

Then, if you are unable to communicate or make decisions in the future, your family, physician and others will know your wishes.

Who needs to talk about it?

You need to start this important conversation if:

- You are an elderly person or you have loved ones who are aging.
- You want to make sure your wishes for health care, at any age, are understood and followed.
- You don't want to burden family members or others with decisions or misunderstandings about your care.
- You want to achieve peace of mind for you and your loved ones.

One Family's Story

For reasons unknown—maybe because her mother was a former nurse—care at the end of life was an issue Anne had talked about with her parents for a long time.

"It just came up really naturally," recalls Anne, "especially as they had friends who were aging or ill. And my parents must have visited about it between them. They were very unified about what they wanted."

After Anne's mother was hospitalized with a brain hemorrhage, Anne realized that, not only had her parents "talked the talk," but that the right paperwork had been done, too. Says Anne: "We had the legal papers—the health care directive—and I knew where they were."

Anne's mother had also spoken with her physician about the kind of care she wanted at the end of life.

"Nobody has ever been clearer with me about her wishes than your mother," the doctor told Anne.

A Gift You Can Give

Talking with other people about your wishes is a true gift you give to those you love!

When you start the conversation—and when you document and discuss your wishes through a health care directive—you can help family, friends, clergy and others who might otherwise be uncertain about what you would want done when you can't speak for yourself. This vital conversation is also a great opportunity to talk about very meaningful issues:

- Your past
- Love and forgiveness
- Relationships
- Hopes and fears
- Spiritual beliefs

Making sure *your* wishes are followed

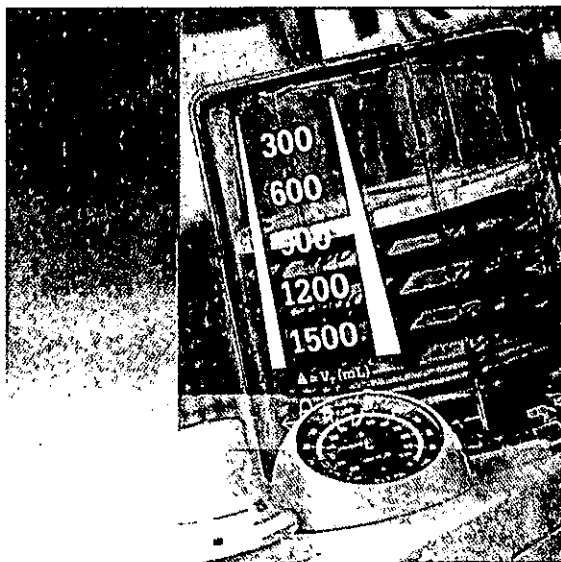
How do you *know* that your wishes for health care will be followed? How can you be certain, for example, that you won't receive unwanted medical treatments that will sustain your life, even if your quality of life is poor? Or, how do you know your life will be prolonged, if you wish, as long as possible?

There is only one way to be as certain as you can that your family, health care providers and others will understand and follow your wishes: *you must put them in writing* using a special form called a "health care directive." (An example of the form is located on pages 15-23 of this resource guide.)

Keep in mind:

- If you do not have a health care directive in place and you become seriously ill or injured, your doctors, hospital staff and loved ones will do the best they can.
- However, without clear direction from you, your loved ones may have to guess what you would want.
- If there is any uncertainty about your wishes, care could be delivered that may not be consistent with your wishes.
- If you want people to know—and follow—your wishes, you should talk with them about your preferences and have a written and signed health care directive in place.

Let this guide help you start the conversations to get that done



How to *start* the conversation

You need to talk with your loved ones and health care professional about your wishes, so that they understand how you want to be treated if you can't speak for yourself.

Sometimes it is difficult to begin a conversation. But it really is OK to do so. How can you start?

- Use this guide and the sample form as a starting point for writing down notes and questions you may have about your options and wishes for care when you can't speak for yourself.
- Talk with those closest to you about your values and preferences for care. This may be an ongoing discussion for a while, and that's OK.
- Talk to your health care professional about medical options and the kinds of treatment you want or do not want.
- Think of other people—including your pastor or attorney—with whom you may also want to talk.
- Document your wishes by completing and signing a health care directive form. (More information and a sample form are found on pages 15-23 of this guide.)

Conversation starters:

- Encourage family members to discuss their plans by talking about your own: "Mom, did you know I have filled out a health care directive?"
- Open conversation by relating to a personal event: "When I was a girl, people never talked about dying, but I think it's important."
- "(Doctor, pastor, etc.), I would like to talk about my options for the end of life and make sure you understand what I want when that time comes."
- Tell a story about someone else's experience with an end-of-life or similar situation and relate that to what you would like your own experience to be.

One Family's Story

While telling family about your wishes may not make all decisions easy, it does provide a roadmap to guide them, a woman named Anne says.

Following a brain hemorrhage, Anne's mother underwent surgery and a variety of treatments. Gradually, though, her condition worsened. Knowing her mother expressly did *not* want to be permanently sustained—particularly after she became unable to speak or take care of herself—Anne and her father were finally able to let go, allowing Anne's mother to die naturally once there was no hope of recovery.

"The gift she gave us was immeasurable," says Anne. "She made it easier for us to make the decision to withdraw futile treatment. Knowing we honored her wishes has made it easier to accept what's happened."

Questions to consider and issues to talk about

Are you getting ready to talk? The conversation checklist offers some questions to help you get started. Make sure your specific wishes related to these questions are indicated when you create your health care directive.

Conversation Checklist

Who will you talk to?

Who will be involved in your care and needs to understand your wishes? Think about opening a conversation, or setting up an appointment to do so, with:

- ☐ Family members or loved ones closest to you (list them) _____
- ☐ Your physician or caregiver _____
- ☐ Your pastor or spiritual adviser _____
- ☐ Other people such as your attorney, hospice care provider or funeral home director _____

Where do you want to be when you die? Who do you want around you?

Many North Dakotans want to die at home.

- ☐ Are there services, such as hospice care, that could help you do that?
- ☐ Who do you want near you when you die? What do you want your loved ones to know?

Who do you want to make decisions for you when you can't?

You should name an *agent*, someone you fully trust, who will help to see that your wishes are carried out.

- ☐ Who will be involved in your care?
- ☐ Have you talked to this person about being your agent if you are unable to make or communicate decisions?
- ☐ Does your agent understand your wishes?
- ☐ Does your agent have a copy of your health care directive?

What kinds of medical treatment do you want or not want? What services will you need to be as comfortable as you want to be?

Discuss specific medical options with your health care provider.

- ☐ How do you feel about relying on machines to stay alive?
- ☐ Do you want everything possible to be done to prolong your life?
- ☐ What kind of quality-of-life measures, such as pain management, do you want?
- ☐ How could hospice care help you and your family at the end of life? How can you access those services when that time comes?



One Family's Story

Dr. Hanson already knew Bill's wishes. Suffering from terminal cancer, 80-year-old Bill had told his physician he wanted no heroic measures.

"When the time comes just let me go," Bill said.

Near the end of Bill's life, though, his children—concerned about dehydration and nutrition—insisted on continuing IVs and oxygen.

"He was unconscious, and there was no hope he would recover," Dr. Hanson recalls. "I felt we were prolonging his suffering."

Unfortunately, the scenario is familiar to people in medicine.

"Every person should really talk over their wishes with their family as well as their physician," states Dr. Hanson. "And if you have a document on hand, you should show it to your family, too. When you have talked to your family members, it really helps them make decisions in the way you would have wished."

Hospice *care* and pain management

Hospice is a form of end-of-life care that focuses on enhancing the quality of life during a person's last days. Hospice services, including medical, emotional, spiritual and grief care, help you stay as comfortable as possible and allow many people to stay in the familiar surroundings of home.

You will want to consider choosing hospice care:

- When you want the focus to be on your comfort and the needs of you and your family.
- For expert help in pain and symptom management.
- When you want your loved ones to have help caring for you while you are dying.

Hospice care can have a positive impact on you and your loved ones.

When you talk about dying

Tell your loved ones, health care provider, spiritual adviser and others:

- Where do you want to die? Do you want to die at home, if possible?
- Are there hospice services that will help your family care for you? How can they access them?
- What kind of help might your loved ones need, if you are dying at home?
- Do you have questions about pain and symptom management?

Answers to some of your questions

*W*hat happens if I don't have a health care directive?

In North Dakota, if you have not appointed a health care agent and you are unable to make or communicate health care decisions, state law will determine who may make health care decisions for you. The law authorizes persons in the following categories, in the order listed, to make decisions:

- Your health care agent, unless a court specifically authorizes a guardian to make decisions for you.
- Your court-appointed guardian or custodian.
- Your spouse.
- Any of your children.
- Your parents.
- Your adult brothers and sisters.
- Your grandparents.
- Your adult grandchildren.
- An adult friend or close relative.

No one in a lower category may provide consent for health care if someone in a higher category has refused to consent to the proposed health care.

Before giving consent, an authorized person must determine that you would have consented to such health care if you were able to do so. If the authorized person is unable to make this determination, he or she may only consent to the proposed health care if he or she feels the health care is in your best interests.

*W*hat form can I use?

North Dakota has an optional legal form called a health care directive that you can use to help start conversations and clearly set forth your wishes for the health care you receive if you are unable to make or communicate your decisions. This new form became effective on August 1, 2005. You can use a health care directive to:

- Give instructions about any aspect of your health care.
- Choose a person to make health care decisions for you.
- Give instructions about specific medical treatments you do or do not want.
- Give other instructions, including where you wish to die.
- Make an organ or tissue donation.

There are many other health care directive forms available that meet legal requirements in North Dakota. You should use a form with which you are comfortable and that best reflects your values and preferences. For additional options and resources, see the list of national and state resources on pages 13 and 14.

To be legal in North Dakota, a health care directive must:

- Be in writing.
- Be dated.
- State the name of the person to whom it applies.
- Be executed by a person with the capacity to understand, make and communicate decisions.
- Be signed by the person to whom it applies or by another person authorized to sign on behalf of the person to whom it applies.
- Contain verification of the required signature, either by a notary public or by qualified witnesses.
- Include a health care instruction or a power of attorney for health care, or both.

It is not necessary to have an attorney provide or fill out the form. Nor is it necessary to use a pre-printed form at all. Any written statement that meets the requirements stated above can serve as a legal health care directive. However, you should contact an attorney if you have legal questions regarding advance care planning.

What if I already have a directive that I signed before the new law? The new law creating the optional health care directive became effective August 1, 2005. If you signed a valid health care directive, living will or durable power of attorney before August 1, 2005, that document remains in effect. You may still wish to review the new optional form and consider whether it would provide a better way for you to express your wishes.

When does a health care directive become effective?

A health care directive is effective when:

- 1) you have executed a health care directive;
- 2) your agent has accepted the position as agent in writing; and
- 3) your doctor has certified, in writing, that you "lack the capacity to make health care decisions."

You lack capacity to make health care decisions when you do not have the ability to understand and appreciate the nature and consequences of a health care decision, including the significant benefits and harms of proposed health care, or reasonable alternatives to that health care, or the ability to communicate a health care decision.

Should I appoint a health care agent?

While it is not required in a health care directive, you may choose another person to make health care decisions for you in the event that you cannot make decisions for yourself. This person is called a health care agent or proxy. Some documents use the term “durable power of attorney for health care” to describe this appointment. In North Dakota, the person you choose as your agent must be 18 years of age or older, and the agent must accept the appointment in writing. In North Dakota, there are certain people you cannot appoint as an agent. These are your health care provider or long-term care services provider, or a non-relative who is employed by your health care provider or long-term care services provider.

The agent has the authority to make the same kinds of decisions about health care that you could make if you were able. This includes the selection and discharge of health care providers and institutions; approval or disapproval of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate; and directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care. You may limit any of these powers or assign additional ones.

Even if you choose a health care agent, you can still give health care instructions in writing that direct your health care agent in making health care decisions.

Talk beforehand to any person you wish to appoint as your health care agent. Find out if the person is willing to accept the responsibility. Tell them about your wishes and preferences for care. Be sure they are willing and able to follow your wishes.

Can I still make my own health care decisions after I have signed a health care directive?

Yes. You will be able to make your own health care decisions as long as you are capable of doing so. Your agent’s authority starts only when your doctor certifies in writing that you do not have the capacity to make health care decisions.

If I am being admitted to or am a patient in a hospital, are there any special requirements?

Yes. The appointment of an agent is not effective if, at the time of execution, you are being admitted to or are a patient in a hospital unless a person designated by the hospital or an attorney licensed to practice law in North Dakota signs a statement that they explained the nature and effect of the appointment to you. This statement is not necessary if you acknowledge in writing that you have read a written explanation of the nature and effect of the appointment.

I f I am a resident of a long-term care facility, are there any special requirements?

Yes. If you are a resident of a nursing home or other long-term care facility at the time you sign a health care directive that appoints an agent, that appointment will not be effective unless (1) or (2) occurs:

- 1) One of the following persons signs a statement affirming that they have explained the nature and effect of the appointment of an agent to you: a member of the clergy, an attorney licensed to practice law in North Dakota, a person designated by the Department of Human Services, or a person designated by the district court in the county where your facility is located; OR
- 2) You state in writing that you have read an explanation of the nature and effect of the appointment of an agent, or a person designated by the hospital or an attorney licensed to practice law in North Dakota signs a statement affirming that they have explained the nature and effect of the appointment to you.

W ill my health care directive be honored?
There are several things you can do to help ensure that your directive is understood and honored. Talk to your loved ones and health care professionals about your wishes and preferences and give them a copy of your directive. Keep your directive up to date. Remember, having a plan and talking about that plan with the people who are important to you ensures that you will have a say in the decisions about your care.

W hat should I do with my health care directive?
You should keep your original document in a place that is easy to find in the event you should become unable to make or communicate decisions. You should provide a copy of your health care directive to your physician and any other health care providers such as your hospital, nursing facility, hospice or home health agency. In addition, you may want to give copies of your health care directive to other persons, such as close family members and your attorney, if you have one. A copy of a health care directive is generally presumed to be a true and accurate copy of the original.

*On page 15,
you will find the North Dakota optional form.*

Glossary of commonly used terms

Advance Care Planning: A process of making decisions, in advance, about the care you would want to receive if you are unable to make or communicate decisions for yourself. The process includes conversations with loved ones, health care professionals and others to provide understanding of your values and personal reflections about your wishes and preferences. The process may also include the completion of a health care directive.

Agent: A person appointed to make decisions for someone else, as in a health care directive.

Decision-making Capacity: The ability to understand and appreciate the nature and consequences of one's actions, including the significant benefits and harms of, and reasonable alternatives to, any proposed health care, and the ability to communicate a health care decision.

Durable Power of Attorney for Health Care: One form of health care directive, in which a person appoints an agent to make health care decisions on their behalf, if they are no longer able to make or communicate decisions.

Health Care Decision: This term refers to your decision to consent to, refuse to consent to, withdraw your consent to, or request for any care, treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition. This includes the selection and discharge of health-care providers and institutions; the approval or disapproval of diagnostic tests, surgical procedures, programs of medication, and orders not to resuscitate; and directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care.

Health Care Directive: A written instrument that includes one or more health care instructions, a durable power of attorney for health care, or both. In North Dakota, state law provides an optional directive form called a "health care directive." Other common terms include "advance directive," a "living will," or "durable power of attorney for health care." These all generally refer to documents in which a person states choices for medical treatment and/or designates who should make treatment choices if the person is unable to make or communicate decisions.

Health Care Instruction: A person's direction concerning a future health care decision, including a written statement of the personal values, preferences, guidelines or directions regarding health care directed to health care professionals, others assisting with health care, family members, an agent, or others.

Living Will: One form of an advance directive in which a person makes a declaration of their wishes regarding health care if they are no longer able to make or communicate decisions.

Patient Self Determination Act: A federal law that requires health care providers to educate their patients and the community on issues related to advance directives. It requires hospitals, nursing facilities, hospices, home health agencies and health maintenance organizations certified by Medicare and Medicaid to furnish written information so that patients have the opportunity to express their wishes regarding the use or refusal of medical care, including life-prolonging treatment, nutrition and hydration. The federal law takes no stand on what decisions persons should make. It does not require persons to execute an advance directive.

Resources and Web site links

North Dakota Resources

ND Senior-INFO-LINE

Resource Directory

1-800-451-8693

www.ndseniorinfo.com

ND Health Care Directive Statutes

www.legis.nd.gov/cencode/t23c065.pdf

ND Medical Association

(701)223-9475

www.ndmed.org

ND Long Term Care Association

(701)222-0660

www.ndltca.org/

ND Healthcare Association

(701)224-9732

www.ndha.org

North Dakota Catholic Conference

1-888-419-1237

www.ndcatholic.org/

Blue Cross Blue Shield of North Dakota

(701)282-1100

www.BCBSND.com

ND Association of Home Care

(701)224-1815

www.aptnnd.com/ndahc/

Guardian and Protective Services, Inc.

(701)222-8678; 1-888-570-4277

www.gapsinc.org

ND Right to Life

www.ndrl.org

State Bar Association of ND Lawyer

Referral Program/Volunteer Lawyer

(701)255-1406; 1-800-932-8880

www.sband.org

Legal Assistance of ND

1-800-634-5263

www.legalassist.org

Hospice Programs

Ashley Medical Center Hospice

(701)288-3433

Medcenter One Home Health Hospice, Bismarck

(701)323-8400

St. Alexius Hospice, Bismarck

(701)530-4500

Branch office in Harvey

Presentation Hospice, Carrington

(701)652-7229

Mercy Hospice, Devils Lake

(701)662-2131

Heartland Hospice, Dickinson

(701)456-4378

Hospice of the Red River Valley, Fargo

(701)356-1500

www.hrrv.org

*Offices in Fargo, Grand Forks, Lisbon, Mayville
and Valley City, North Dakota and Detroit Lakes,
Minnesota*

Altru Home Services Hospice,

Grand Forks

(701)780-5258

Offices in Park River, Grafton and McVie

Sakakawea Hospice, Hazen

(701)748-2041

Dakota Prairie Helping Hands, Hettinger

(701)567-4975

Jamestown Hospital Hospice

(701)252-1050

Linton Hospital Hospice

(701)254-4511

Trinity Hospitals – Hospice, Minot

(701)857-5083

Heart of America Hospice, Rugby

(701)776-5261

Mercy Hospice, Williston

(701)774-7430

Advance Directives

Aging With Dignity (Five Wishes)

1-888-5-WISHES

www.agingwithdignity.org

Altru Health System (ND and MN Forms),
Grand Forks

[http://www.altru.org/patientinformation/
advancedirectives.htm](http://www.altru.org/patientinformation/advancedirectives.htm)

Dakota Clinic / Innovis Health, Fargo

www.dakotaclinic.com

Medcenter One Health Systems, Bismarck

<http://www.medcenterone.com>

MeritCare Health System, Fargo

(ND and MN Forms)

<http://www.meritcare.com>

St. Alexius / Primecare, Bismarck

<http://www.st.alexius.org/>

Trinity Health, Minot

<http://trinity.minot.org>

West River Health Services, Hettinger

<http://www.wrhs.com>

Minnesota Hospice Organization

www.mnhospice.org

American Health Care Association

www.longtermcareliving.com

National Hospice and Palliative Care Organization
(Caring Connections)

1-800-658-8898

www.nhpco.org

Midwest Bioethics Center

(Caring Conversations)

1-800-344-3829

www.midbio.org

AARP

1-888-687-2277

www.aarp.org/endoflife

American Medical Association

www.ama-assn.org/ama/pub/category/14894.html

American Bar Association

Toolkit for Advance Care Planning

www.abanet.org/aging/toolkit/home.html

American Hospital Association

www.putitinwriting.org

Pain Management

Pain and Policy Study Group

www.medsch.wisc.edu/painpolicy

American Pain Foundation

1-888-615-PAIN(7246)

www.painfoundation.org

HEALTH CARE DIRECTIVE

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

PART I: Name another person (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 person 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 that 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 to 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 doctors 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 doctor:

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):

Any other things:

PART III: MAKING AN ANATOMICAL GIFT

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: _____

PART IV: MAKING THE DOCUMENT LEGAL

DATE AND SIGNATURE OF PRINCIPAL

(YOU MUST DATE AND SIGN THIS HEALTH CARE DIRECTIVE.)

I revoke any prior health care directive. _____
(you sign here)

I sign my name to this Health Care Directive Form on _____ at _____, _____
(date) (city) (state)

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

OPTION 1: NOTARY PUBLIC

In my presence on _____ (date), _____ (name of declarant) acknowledged the declarant's signature on this document or acknowledged that the declarant directed the person 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 person 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 person 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)

ACCEPTANCE OF APPOINTMENT OF HEALTH CARE AGENT

I accept this appointment and agree to serve as agent for health care decisions. I understand I have a duty to act consistently with the desires of the principal as expressed in this appointment. I understand that this document gives me authority over health care decisions for the principal only if the principal becomes incapacitated.

I understand that I must act in good faith in exercising my authority under this power of attorney. I understand that the principal may revoke this appointment at any time in any manner.

If I choose to withdraw during the time the principal is competent, I must notify the principal of my decision. If I choose to withdraw when the principal is not able to make health care decisions, I must notify the principal's physician.

(Signature of agent/date)

(Signature of alternate agent/date)

PRINCIPAL'S STATEMENT

(Only necessary if you are a resident of a long-term care facility or are a hospital patient or person being admitted to a hospital. The principal's statement is an alternative to the explanation required on page 23.)

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

Dated this day of _____, 20____.

(you sign here)

**STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO
RESIDENT OF LONG-TERM CARE FACILITY**

(Only necessary if you are a resident of a long-term care facility and Part I is completed appointing an agent. This statement does not need to be completed if you have read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement on page 22.)

I have explained the nature and effect of this health care directive to _____
(Name of principal)

who signed this document and who is a resident of _____
(Name and city of facility)

I am *(check one of the following)*:

- ☐ A recognized member of the clergy.
- ☐ An attorney licensed to practice in North Dakota.
- ☐ A person designated by the district court for the county in which the above-named facility is located.
- ☐ A person designated by the North Dakota Department of Human Services.

Dated on _____, 20____. _____
(Signature)

**STATEMENT AFFIRMING EXPLANATION OF DOCUMENT TO
HOSPITAL PATIENT OR PERSON BEING ADMITTED TO HOSPITAL**

(Only necessary if you are a patient in a hospital or are being admitted to a hospital and Part I is completed appointing an agent. This statement does not need to be completed if you have read a written explanation of the nature and effect of an appointment of a health care agent and completed the Principal's Statement on page 22.)

I have explained the nature and effect of this health care directive to _____
(Name of principal)

who signed this document and who is a patient or is being admitted as a patient of _____
(Name and city of hospital)

I am *(check one of the following)*:

- ☐ An attorney licensed to practice in North Dakota.
- ☐ A person designated by the hospital to explain the health care directive.

Dated on _____, 20____. _____
(Signature)

Your Life. Your Choices.

Education. Career. Marriage. Retirement. All your life you make choices that help define who you are. But who will make choices for you if you become unable? Your loved ones? Strangers? The state?

Don't leave your final choices to anyone else. Use this guide to begin conversations about your future health care wishes and to put your conclusions in writing.



Your HEALTH is our FOUNDATION
www.dakmed.org



BlueCross BlueShield
of North Dakota

An independent licensee of the Blue Cross & Blue Shield Association

1-800-342-4718 • www.BCBSND.com

Horizon Mutual Insurance Company

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