



Rep. Jennifer Gong-Gershowitz

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1 AMENDMENT TO HOUSE BILL 5047

2 AMENDMENT NO. _____. Amend House Bill 5047 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Power of Attorney Act is amended
5 by changing Sections 4-4.1, 4-7, and 4-10 as follows:

6 (755 ILCS 45/4-4.1)

7 Sec. 4-4.1. Format. Documents, writings, forms, and copies
8 referred to in this Article may be in hard copy or electronic
9 format. Nothing in this Article is intended to prevent the
10 population of a written instrument of a health care agency,
11 document, writing, or form with electronic data. An agent may
12 present an electronic device displaying an electronic copy of
13 an executed form as proof of the health care agency.

14 (Source: P.A. 101-163, eff. 1-1-20.)

15 (755 ILCS 45/4-7) (from Ch. 110 1/2, par. 804-7)

1 Sec. 4-7. Duties of health care providers and others in
2 relation to health care agencies. Each health care provider
3 and each other person with whom an agent deals under a health
4 care agency shall be subject to the following duties and
5 responsibilities:

6 (a) It is the responsibility of the agent or patient to
7 notify the health care provider of the existence of the health
8 care agency and any amendment or revocation thereof. An agent
9 may present an electronic device displaying an electronic copy
10 of an executed form as proof of the health care agency. A
11 health care provider furnished with a copy of a health care
12 agency shall make it a part of the patient's medical records
13 and shall enter in the records any change in or termination of
14 the health care agency by the principal that becomes known to
15 the provider. Whenever a provider believes a patient may lack
16 capacity to give informed consent to health care which the
17 provider deems necessary, the provider shall consult with any
18 available health care agent known to the provider who then has
19 power to act for the patient under a health care agency.

20 (b) A health care decision made by an agent in accordance
21 with the terms of a health care agency shall be complied with
22 by every health care provider to whom the decision is
23 communicated, subject to the provider's right to administer
24 treatment for the patient's comfort care or alleviation of
25 pain; but if the provider is unwilling to comply with the
26 agent's decision, the provider shall promptly inform the agent

1 who shall then be responsible to make the necessary
2 arrangements for the transfer of the patient to another
3 provider. It is understood that a provider who is unwilling to
4 comply with the agent's decision will continue to afford
5 reasonably necessary consultation and care in connection with
6 the transfer.

7 (c) At the patient's expense and subject to reasonable
8 rules of the health care provider to prevent disruption of the
9 patient's health care, each health care provider shall give an
10 agent authorized to receive such information under a health
11 care agency the same right the principal has to examine and
12 copy any part or all of the patient's medical records that the
13 agent deems relevant to the exercise of the agent's powers,
14 whether the records relate to mental health or any other
15 medical condition and whether they are in the possession of or
16 maintained by any physician, psychiatrist, psychologist,
17 therapist, hospital, nursing home or other health care
18 provider.

19 (d) If and to the extent a health care agency empowers the
20 agent to (1) make an anatomical gift on behalf of the principal
21 under the Illinois Anatomical Gift Act, as now or hereafter
22 amended, or (2) authorize an autopsy of the principal's body
23 pursuant to Section 2 of "An Act in relation to autopsy of dead
24 bodies", approved August 13, 1965, as now or hereafter
25 amended, or (3) direct the disposition of the principal's
26 remains, the decision by an authorized agent as to anatomical

1 gift, autopsy approval or remains disposition shall be deemed
2 the act of the principal and shall control over the decision of
3 other persons who might otherwise have priority; and each
4 person to whom a direction by the agent in accordance with the
5 terms of the agency is communicated shall comply with such
6 direction.

7 (Source: P.A. 93-794, eff. 7-22-04.)

8 (755 ILCS 45/4-10) (from Ch. 110 1/2, par. 804-10)

9 Sec. 4-10. Statutory short form power of attorney for
10 health care.

11 (a) The form prescribed in this Section (sometimes also
12 referred to in this Act as the "statutory health care power")
13 may be used to grant an agent powers with respect to the
14 principal's own health care; but the statutory health care
15 power is not intended to be exclusive nor to cover delegation
16 of a parent's power to control the health care of a minor
17 child, and no provision of this Article shall be construed to
18 invalidate or bar use by the principal of any other or
19 different form of power of attorney for health care.
20 Nonstatutory health care powers must be executed by the
21 principal, designate the agent and the agent's powers, and
22 comply with the limitations in Section 4-5 of this Article,
23 but they need not be witnessed or conform in any other respect
24 to the statutory health care power.

25 No specific format is required for the statutory health

1 care power of attorney other than the notice must precede the
2 form. The statutory health care power may be included in or
3 combined with any other form of power of attorney governing
4 property or other matters.

5 The signature and execution requirements set forth in this
6 Article are satisfied by: (i) written signatures or initials;
7 or (ii) electronic signatures or computer-generated signature
8 codes. Electronic documents under this Act may be created,
9 signed, or revoked electronically using a generic,
10 technology-neutral system in which each user is assigned a
11 unique identifier that is securely maintained and in a manner
12 that meets the regulatory requirements for a digital or
13 electronic signature. Compliance with the standards defined in
14 the Uniform Electronic Transactions Act or the implementing
15 rules of the Hospital Licensing Act for medical record entry
16 authentication for author validation of the documentation,
17 content accuracy, and completeness meets this standard.

18 (b) The Illinois Statutory Short Form Power of Attorney
19 for Health Care shall be substantially as follows:

20 NOTICE TO THE INDIVIDUAL SIGNING

21 THE POWER OF ATTORNEY FOR HEALTH CARE

22 No one can predict when a serious illness or accident
23 might occur. When it does, you may need someone else to speak
24 or make health care decisions for you. If you plan now, you can
25 increase the chances that the medical treatment you get will

1 be the treatment you want.

2 In Illinois, you can choose someone to be your "health
3 care agent". Your agent is the person you trust to make health
4 care decisions for you if you are unable or do not want to make
5 them yourself. These decisions should be based on your
6 personal values and wishes.

7 It is important to put your choice of agent in writing. The
8 written form is often called an "advance directive". You may
9 use this form or another form, as long as it meets the legal
10 requirements of Illinois. There are many written and online
11 ~~en-line~~ resources to guide you and your loved ones in having a
12 conversation about these issues. You may find it helpful to
13 look at these resources while thinking about and discussing
14 your advance directive.

15 WHAT ARE THE THINGS I WANT MY
16 HEALTH CARE AGENT TO KNOW?

17 The selection of your agent should be considered
18 carefully, as your agent will have the ultimate
19 decision-making authority once this document goes into effect,
20 in most instances after you are no longer able to make your own
21 decisions. While the goal is for your agent to make decisions
22 in keeping with your preferences and in the majority of
23 circumstances that is what happens, please know that the law
24 does allow your agent to make decisions to direct or refuse
25 health care interventions or withdraw treatment. Your agent

1 will need to think about conversations you have had, your
2 personality, and how you handled important health care issues
3 in the past. Therefore, it is important to talk with your agent
4 and your family about such things as:

5 (i) What is most important to you in your life?

6 (ii) How important is it to you to avoid pain and
7 suffering?

8 (iii) If you had to choose, is it more important to you
9 to live as long as possible, or to avoid prolonged
10 suffering or disability?

11 (iv) Would you rather be at home or in a hospital for
12 the last days or weeks of your life?

13 (v) Do you have religious, spiritual, or cultural
14 beliefs that you want your agent and others to consider?

15 (vi) Do you wish to make a significant contribution to
16 medical science after your death through organ or whole
17 body donation?

18 (vii) Do you have an existing advance directive, such
19 as a living will, that contains your specific wishes about
20 health care that is only delaying your death? If you have
21 another advance directive, make sure to discuss with your
22 agent the directive and the treatment decisions contained
23 within that outline your preferences. Make sure that your
24 agent agrees to honor the wishes expressed in your advance
25 directive.

1 WHAT KIND OF DECISIONS CAN MY AGENT MAKE?

2 If there is ever a period of time when your physician
3 determines that you cannot make your own health care
4 decisions, or if you do not want to make your own decisions,
5 some of the decisions your agent could make are to:

6 (i) talk with physicians and other health care
7 providers about your condition.

8 (ii) see medical records and approve who else can see
9 them.

10 (iii) give permission for medical tests, medicines,
11 surgery, or other treatments.

12 (iv) choose where you receive care and which
13 physicians and others provide it.

14 (v) decide to accept, withdraw, or decline treatments
15 designed to keep you alive if you are near death or not
16 likely to recover. You may choose to include guidelines
17 and/or restrictions to your agent's authority.

18 (vi) agree or decline to donate your organs or your
19 whole body if you have not already made this decision
20 yourself. This could include donation for transplant,
21 research, and/or education. You should let your agent know
22 whether you are registered as a donor in the First Person
23 Consent registry maintained by the Illinois Secretary of
24 State or whether you have agreed to donate your whole body
25 for medical research and/or education.

26 (vii) decide what to do with your remains after you

1 have died, if you have not already made plans.

2 (viii) talk with your other loved ones to help come to
3 a decision (but your designated agent will have the final
4 say over your other loved ones).

5 Your agent is not automatically responsible for your
6 health care expenses.

7 WHOM SHOULD I CHOOSE TO BE MY HEALTH CARE AGENT?

8 You can pick a family member, but you do not have to. Your
9 agent will have the responsibility to make medical treatment
10 decisions, even if other people close to you might urge a
11 different decision. The selection of your agent should be done
12 carefully, as he or she will have ultimate decision-making
13 authority for your treatment decisions once you are no longer
14 able to voice your preferences. Choose a family member,
15 friend, or other person who:

16 (i) is at least 18 years old;

17 (ii) knows you well;

18 (iii) you trust to do what is best for you and is
19 willing to carry out your wishes, even if he or she may not
20 agree with your wishes;

21 (iv) would be comfortable talking with and questioning
22 your physicians and other health care providers;

23 (v) would not be too upset to carry out your wishes if
24 you became very sick; and

25 (vi) can be there for you when you need it and is

1 willing to accept this important role.

2 WHAT IF MY AGENT IS NOT AVAILABLE OR IS
3 UNWILLING TO MAKE DECISIONS FOR ME?

4 If the person who is your first choice is unable to carry
5 out this role, then the second agent you chose will make the
6 decisions; if your second agent is not available, then the
7 third agent you chose will make the decisions. The second and
8 third agents are called your successor agents and they
9 function as back-up agents to your first choice agent and may
10 act only one at a time and in the order you list them.

11 WHAT WILL HAPPEN IF I DO NOT
12 CHOOSE A HEALTH CARE AGENT?

13 If you become unable to make your own health care
14 decisions and have not named an agent in writing, your
15 physician and other health care providers will ask a family
16 member, friend, or guardian to make decisions for you. In
17 Illinois, a law directs which of these individuals will be
18 consulted. In that law, each of these individuals is called a
19 "surrogate".

20 There are reasons why you may want to name an agent rather
21 than rely on a surrogate:

22 (i) The person or people listed by this law may not be
23 who you would want to make decisions for you.

24 (ii) Some family members or friends might not be able

1 or willing to make decisions as you would want them to.

2 (iii) Family members and friends may disagree with one
3 another about the best decisions.

4 (iv) Under some circumstances, a surrogate may not be
5 able to make the same kinds of decisions that an agent can
6 make.

7 WHAT IF THERE IS NO ONE AVAILABLE

8 WHOM I TRUST TO BE MY AGENT?

9 In this situation, it is especially important to talk to
10 your physician and other health care providers and create
11 written guidance about what you want or do not want, in case
12 you are ever critically ill and cannot express your own
13 wishes. You can complete a living will. You can also write your
14 wishes down and/or discuss them with your physician or other
15 health care provider and ask him or her to write it down in
16 your chart. You might also want to use written or online
17 ~~on-line~~ resources to guide you through this process.

18 WHAT DO I DO WITH THIS FORM ONCE I COMPLETE IT?

19 Follow these instructions after you have completed the
20 form:

21 (i) Sign the form in front of a witness. See the form
22 for a list of who can and cannot witness it.

23 (ii) Ask the witness to sign it, too.

24 (iii) There is no need to have the form notarized.

1 form provided here, any document you complete must be executed
 2 by you, designate an agent who is over 18 years of age and not
 3 prohibited from serving as your agent, and state the agent's
 4 powers, but it need not be witnessed or conform in any other
 5 respect to the statutory health care power.

6 If you have questions about the use of any form, you may
 7 want to consult your physician, other health care provider,
 8 and/or an attorney.

9 MY POWER OF ATTORNEY FOR HEALTH CARE

10 THIS POWER OF ATTORNEY REVOKES ALL PREVIOUS POWERS OF ATTORNEY
 11 FOR HEALTH CARE. (You must sign this form and a witness must
 12 also sign it before it is valid)

13 My name (Print your full name):

14 My address:

15 I WANT THE FOLLOWING PERSON TO BE MY HEALTH CARE AGENT

16 (an agent is your personal representative under state and
 17 federal law):

18 (Agent name)

19 (Agent address)

20 (Agent phone number)

21 (Please check box if applicable) If a guardian of my

1 person is to be appointed, I nominate the agent acting under
2 this power of attorney as guardian.

3 SUCCESSOR HEALTH CARE AGENT(S) (optional):

4 If the agent I selected is unable or does not want to make
5 health care decisions for me, then I request the person(s) I
6 name below to be my successor health care agent(s). Only one
7 person at a time can serve as my agent (add another page if you
8 want to add more successor agent names):

9

10 (Successor agent #1 name, address and phone number)

11

12 (Successor agent #2 name, address and phone number)

13 MY AGENT CAN MAKE HEALTH CARE DECISIONS FOR ME, INCLUDING:

14 (i) Deciding to accept, withdraw, or decline treatment
15 for any physical or mental condition of mine, including
16 life-and-death decisions.

17 (ii) Agreeing to admit me to or discharge me from any
18 hospital, home, or other institution, including a mental
19 health facility.

20 (iii) Having complete access to my medical and mental
21 health records, and sharing them with others as needed,
22 including after I die.

23 (iv) Carrying out the plans I have already made, or,
24 if I have not done so, making decisions about my body or

1 remains, including organ, tissue or whole body donation,
2 autopsy, cremation, and burial.

3 The above grant of power is intended to be as broad as
4 possible so that my agent will have the authority to make any
5 decision I could make to obtain or terminate any type of health
6 care, including withdrawal of nutrition and hydration and
7 other life-sustaining measures.

8 I AUTHORIZE MY AGENT TO (please check any one box):

9 Make decisions for me only when I cannot make them for
10 myself. The physician(s) taking care of me will determine
11 when I lack this ability.

12 (If no box is checked, then the box above shall be
13 implemented.) OR

14 Make decisions for me only when I cannot make them for
15 myself. The physician(s) taking care of me will determine
16 when I lack this ability. Starting now, for the purpose of
17 assisting me with my health care plans and decisions, my
18 agent shall have complete access to my medical and mental
19 health records, the authority to share them with others as
20 needed, and the complete ability to communicate with my
21 personal physician(s) and other health care providers,
22 including the ability to require an opinion of my
23 physician as to whether I lack the ability to make
24 decisions for myself. OR

25 Make decisions for me starting now and continuing

1 after I am no longer able to make them for myself. While I
2 am still able to make my own decisions, I can still do so
3 if I want to.

4 The subject of life-sustaining treatment is of particular
5 importance. Life-sustaining treatments may include tube
6 feedings or fluids through a tube, breathing machines, and
7 CPR. In general, in making decisions concerning
8 life-sustaining treatment, your agent is instructed to
9 consider the relief of suffering, the quality as well as the
10 possible extension of your life, and your previously expressed
11 wishes. Your agent will weigh the burdens versus benefits of
12 proposed treatments in making decisions on your behalf.

13 Additional statements concerning the withholding or
14 removal of life-sustaining treatment are described below.
15 These can serve as a guide for your agent when making decisions
16 for you. Ask your physician or health care provider if you have
17 any questions about these statements.

18 SELECT ONLY ONE STATEMENT BELOW THAT BEST EXPRESSES YOUR
19 WISHES (optional):

20 The quality of my life is more important than the
21 length of my life. If I am unconscious and my attending
22 physician believes, in accordance with reasonable medical
23 standards, that I will not wake up or recover my ability to
24 think, communicate with my family and friends, and

1 I elect for the revocation of this power of attorney
2 to take effect immediately if I communicate my intent to
3 revoke it.

4 HAVE YOUR WITNESS AGREE TO WHAT IS WRITTEN BELOW, AND THEN
5 COMPLETE THE SIGNATURE PORTION:

6 I am at least 18 years old. (check one of the options
7 below):

8 I saw the principal sign this document, or
9 the principal told me that the signature or mark on
10 the principal signature line is his or hers.

11 I am not the agent or successor agent(s) named in this
12 document. I am not related to the principal, the agent, or the
13 successor agent(s) by blood, marriage, or adoption. I am not
14 the principal's physician, advanced practice registered nurse,
15 dentist, podiatric physician, optometrist, psychologist, or a
16 relative of one of those individuals. I am not an owner or
17 operator (or the relative of an owner or operator) of the
18 health care facility where the principal is a patient or
19 resident.

20 Witness printed name:.....

21 Witness address:

22 Witness signature:

23 Today's date:.....

24 (c) The statutory short form power of attorney for health

1 care (the "statutory health care power") authorizes the agent
2 to make any and all health care decisions on behalf of the
3 principal which the principal could make if present and under
4 no disability, subject to any limitations on the granted
5 powers that appear on the face of the form, to be exercised in
6 such manner as the agent deems consistent with the intent and
7 desires of the principal. The agent will be under no duty to
8 exercise granted powers or to assume control of or
9 responsibility for the principal's health care; but when
10 granted powers are exercised, the agent will be required to
11 use due care to act for the benefit of the principal in
12 accordance with the terms of the statutory health care power
13 and will be liable for negligent exercise. The agent may act in
14 person or through others reasonably employed by the agent for
15 that purpose but may not delegate authority to make health
16 care decisions. The agent may sign and deliver all
17 instruments, negotiate and enter into all agreements, and do
18 all other acts reasonably necessary to implement the exercise
19 of the powers granted to the agent. Without limiting the
20 generality of the foregoing, the statutory health care power
21 shall include the following powers, subject to any limitations
22 appearing on the face of the form:

23 (1) The agent is authorized to give consent to and
24 authorize or refuse, or to withhold or withdraw consent
25 to, any and all types of medical care, treatment, or
26 procedures relating to the physical or mental health of

1 the principal, including any medication program, surgical
2 procedures, life-sustaining treatment, or provision of
3 food and fluids for the principal.

4 (2) The agent is authorized to admit the principal to
5 or discharge the principal from any and all types of
6 hospitals, institutions, homes, residential or nursing
7 facilities, treatment centers, and other health care
8 institutions providing personal care or treatment for any
9 type of physical or mental condition. The agent shall have
10 the same right to visit the principal in the hospital or
11 other institution as is granted to a spouse or adult child
12 of the principal, any rule of the institution to the
13 contrary notwithstanding.

14 (3) The agent is authorized to contract for any and
15 all types of health care services and facilities in the
16 name of and on behalf of the principal and to bind the
17 principal to pay for all such services and facilities, and
18 to have and exercise those powers over the principal's
19 property as are authorized under the statutory property
20 power, to the extent the agent deems necessary to pay
21 health care costs; and the agent shall not be personally
22 liable for any services or care contracted for on behalf
23 of the principal.

24 (4) At the principal's expense and subject to
25 reasonable rules of the health care provider to prevent
26 disruption of the principal's health care, the agent shall

1 have the same right the principal has to examine and copy
2 and consent to disclosure of all the principal's medical
3 records that the agent deems relevant to the exercise of
4 the agent's powers, whether the records relate to mental
5 health or any other medical condition and whether they are
6 in the possession of or maintained by any physician,
7 psychiatrist, psychologist, therapist, hospital, nursing
8 home, or other health care provider. The authority under
9 this paragraph (4) applies to any information governed by
10 the Health Insurance Portability and Accountability Act of
11 1996 ("HIPAA") and regulations thereunder. The agent
12 serves as the principal's personal representative, as that
13 term is defined under HIPAA and regulations thereunder.

14 (5) The agent is authorized: to direct that an autopsy
15 be made pursuant to Section 2 of the Autopsy Act; to make a
16 disposition of any part or all of the principal's body
17 pursuant to the Illinois Anatomical Gift Act, as now or
18 hereafter amended; and to direct the disposition of the
19 principal's remains.

20 (6) At any time during which there is no executor or
21 administrator appointed for the principal's estate, the
22 agent is authorized to continue to pursue an application
23 or appeal for government benefits if those benefits were
24 applied for during the life of the principal.

25 (d) A physician may determine that the principal is unable
26 to make health care decisions for himself or herself only if

1 the principal lacks decisional capacity, as that term is
2 defined in Section 10 of the Health Care Surrogate Act.

3 (e) If the principal names the agent as a guardian on the
4 statutory short form, and if a court decides that the
5 appointment of a guardian will serve the principal's best
6 interests and welfare, the court shall appoint the agent to
7 serve without bond or security.

8 (f) If the agent presents the statutory short form
9 electronically, an attending physician, emergency medical
10 services personnel as defined by Section 3.5 of the Emergency
11 Medical Services (EMS) Systems Act, or health care provider
12 shall not refuse to give effect to a health care agency if the
13 agent presents an electronic device displaying an electronic
14 copy of an executed form as proof of the health care agency.
15 Any person or entity that provides a statutory short form to
16 the public shall post for a period of 2 years information on
17 its website regarding the changes made by this amendatory Act
18 of the 102nd General Assembly.

19 (Source: P.A. 101-81, eff. 7-12-19; 101-163, eff. 1-1-20;
20 102-38, eff. 6-25-21; 102-181, eff. 7-30-21; revised
21 9-22-21.)".