

The Health Care Directives and Substitute Health Care Decision Makers Act, 2015

being

Chapter H-0.002* of *The Statutes of Saskatchewan, 2015*.
(effective February 15, 2017).

***NOTE:** Pursuant to subsection 33(1) of *The Interpretation Act, 1995*, the Consequential Amendment sections, schedules and/or tables within this Act have been removed. Upon coming into force, the consequential amendments contained in those sections became part of the enactment(s) that they amend, and have thereby been incorporated into the corresponding Acts. Please refer to the Separate Chapter to obtain consequential amendment details and specifics.

NOTE:

This consolidation is not official and is subject to House amendments and Law Clerk and Parliamentary Counsel changes to Separate Chapters that may be incorporated up until the publication of the annual bound volume. Amendments have been incorporated for convenience of reference and the official Statutes and Regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the official Statutes and Regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER H-0.002

An Act respecting Health Care Directives and Substitute Health Care Decision Makers and to make a consequential amendment to *The Powers of Attorney Act, 2002*

PART I Preliminary Matters

Short title

1 This Act may be cited as *The Health Care Directives and Substitute Health Care Decision Makers Act, 2015*.

Interpretation

2(1) In this Act:

“**adult**” means a person 18 years of age or more; (« *adulte* »)

“**capacity**” means the ability:

- (a) to understand information relevant to a health care decision respecting a proposed treatment;
- (b) to appreciate the reasonably foreseeable consequences of making or not making a health care decision respecting a proposed treatment; and
- (c) to communicate a health care decision with respect to a proposed treatment; (« *capacité* »)

“**directive**” means instructions given by a person pursuant to this Act that deal with the person’s health care decisions, with the appointment of a proxy or with both; (« *directive* »)

“**health care decision**” means a consent, refusal of consent or withdrawal of consent to treatment; (« *décision en matière de soins de santé* »)

“**nearest relative**” means nearest relative as described in section 15; (« *plus proche parent* »)

“**personal guardian**” means a personal guardian appointed pursuant to *The Adult Guardianship and Co-decision-making Act* who has the authority to make health care decisions for a dependent adult and who acts in accordance with the authority granted to the personal guardian pursuant to that Act; (« *tuteur à la personne* »)

“**proxy**” means a person appointed in a directive to make health care decisions for the person making the directive; (« *mandataire* »)

“**treatment**” means anything that is done for a therapeutic, preventive or palliative purpose related to the physical or mental health of a person; (« *traitement* »)

“**treatment provider**” means a person authorized by law to provide treatment. (« *fournisseur de traitements* »)

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- (2) Nothing in this Act authorizes:
- (a) a decision in a directive, by a proxy appointed in a directive, by a personal guardian or by a nearest relative, with respect to an act or omission that is prohibited by the *Criminal Code*; or
 - (b) the use of a directive to consent to active euthanasia or assisted suicide.

2015, cH-0.002, s.2.

PART II
Directives

Persons who may make directives

3 Any person 16 years of age or more who has the capacity to make a health care decision may make a directive.

2015, cH-0.002, s.3.

When directive in effect

4(1) A directive takes effect when the person making the directive does not have the capacity to make a health care decision respecting a proposed treatment.

(2) A directive remains in effect until the person making the directive recovers his or her capacity to make a health care decision respecting a proposed treatment.

2015, cH-0.002, s.4.

Effect of directive

5(1) If a health care decision in a directive clearly anticipates and gives directions relating to treatment for the specific circumstances that exist, the health care decision in the directive has the same effect as a health care decision made by a person who has the capacity to make a health care decision respecting a proposed treatment.

(2) If a health care decision in a directive does not clearly anticipate and give directions relating to treatment for the specific circumstances that exist, the directive is to be used for guidance as to the wishes of the person making the directive.

(3) A health care decision made by a proxy in accordance with section 12 has the same effect as a health care decision made by a person who has the capacity to make a health care decision respecting a proposed treatment.

(4) If a directive is made by a person who is the subject of a certificate pursuant to section 24 of *The Mental Health Services Act*, a detention order pursuant to section 24.1 of that Act or a community treatment order pursuant to section 24.2 of that Act:

- (a) a health care decision in the directive relating to treatment for a mental disorder is to be used for guidance as to the wishes of the person making the directive;

- (b) subsections (1) and (2) apply with respect to any other health care decisions in the directive;

(c) a health care decision made by a proxy relating to treatment for a mental disorder is to be used for guidance as to the wishes of the person making the directive; and

(d) subsection (3) applies with respect to any other health care decisions made by a proxy.

2015, cH-0.002, s.5.

Requirements of a directive

6(1) Subject to subsection (3), a directive is not valid unless it is:

(a) in writing; and

(b) dated and signed:

(i) by the person making the directive; or

(ii) at the direction and in the presence of the person making the directive, by a person other than a proxy appointed in the directive or the proxy's spouse.

(2) When a directive is signed pursuant to subclause (1)(b)(ii):

(a) the person making the directive shall acknowledge the signature in the presence of a witness who is not a proxy appointed in the directive or the proxy's spouse; and

(b) the witness shall sign the directive as a witness in the presence of the person making the directive.

(3) A person may make a directive by any method prescribed in the regulations.

2015, cH-0.002, s.6.

Revocation of directive

7(1) A person who made a directive or any other person at the direction and in the presence of a person who made the directive may revoke the directive:

(a) orally;

(b) in writing;

(c) by destroying the directive; or

(d) by making a new directive.

(2) Unless a directive states otherwise, an appointment of a spouse as a proxy is revoked if the marriage is:

(a) terminated by divorce; or

(b) found to be void or declared a nullity by any court in a proceeding to which the person making the directive is a party.

2015, cH-0.002, s.7.

Directive made outside Saskatchewan

8 A directive made outside Saskatchewan that complies with the requirements of this Act is deemed to be a directive made pursuant to this Act.

2015, cH-0.002, s.8.

Directive made before Act in force

9 A directive made before this Act comes into force that complies with the requirements of this Act is deemed to be a directive made pursuant to this Act.

2015, cH-0.002, s.9.

Form of directive

10 The Lieutenant Governor in Council may, by regulation, prescribe a form for directives, but the use of that form is not mandatory.

2015, cH-0.002, s.10.

PART III
Proxies, Nearest Relatives and Personal Guardians

Age of proxies

11(1) Subject to subsection (2), a proxy must:

- (a) be an adult; and
- (b) have the capacity to make health care decisions.

(2) A married person who is not an adult but who has the capacity to make health care decisions may be appointed as a proxy for his or her spouse.

2015, cH-0.002, s.11.

Wishes or best interests to be followed

12 A proxy shall act:

- (a) according to the wishes expressed by the person making the directive while the person had capacity to make a health care decision, if the proxy has knowledge of the person's wishes; or
- (b) according to what the proxy believes to be in the best interests of the person making the directive, if the proxy has no knowledge of the person's wishes.

2015, cH-0.002, s.12.

Appointment of more than one proxy

13(1) If two or more proxies are appointed in a directive and the directive does not indicate whether they are to act jointly or successively, they are deemed to be appointed to act successively in the order in which they are named in the directive.

- (2) Unless the directive states otherwise, if two or more proxies are appointed to act jointly:
- (a) the health care decision of the majority, if there is one, is deemed to be the health care decision of all; and
 - (b) if one or more of the proxies dies or is unwilling, is unavailable or does not have capacity to make a health care decision, the remainder of the proxies may make the health care decision and the health care decision of the majority, if there is one, is deemed to be the health care decision of all.
- (3) If two or more proxies are appointed to act jointly and the health care decision of the majority cannot be reached, the proxy named first in the directive shall make the health care decision.

2015, c H-0.002, s.13.

No delegation of authority

- 14** A proxy cannot delegate his or her authority as proxy.

2015, c H-0.002, s.14.

Nearest relative

15(1) Subject to subsections (2) and (3), a nearest relative is, with respect to a person requiring treatment mentioned in section 16, the person first described in the following clauses who is willing, available and has the capacity to make a health care decision:

- (a) the spouse or person with whom the person requiring treatment cohabits and has cohabited as a spouse in a relationship of some permanence;
 - (b) an adult son or daughter;
 - (c) a parent or legal custodian;
 - (d) an adult brother or sister;
 - (e) a grandparent;
 - (f) an adult grandchild;
 - (g) an adult uncle or aunt;
 - (h) an adult nephew or niece.
- (2) For the purposes of subsection (1), the relationships listed in clauses (1)(b) to (h) include adoptive relationships.
- (3) For the purposes of subsection (1):
- (a) if a person requiring treatment is not an adult, the health care decision of a legal custodian, within the meaning of *The Children's Law Act, 1997*, is preferred to the health care decision of a non-custodial parent;
 - (b) if a person requiring treatment is an adult, the health care decision of a person, other than the member of the Executive Council to whom for the time being the administration of *The Child and Family Services Act* is assigned, who was the legal custodian of the person requiring treatment immediately before that person became an adult is preferred to the health care decision of a parent;

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- (c) except with respect to adoptive relationships, the health care decision of a relative of the whole blood is preferred to the health care decision of a relative of the same description of the half blood; and
- (d) the health care decision of the elder or eldest of two or more relatives listed in each clause of subsection (1) is preferred to the health care decision of the other or others of those relatives.

2015, cH-0.002, s.15.

Substitute health care decision-making

16(1) Subject to section 17, the nearest relative may make a health care decision on behalf of a person who requires treatment but lacks the capacity to make a health care decision if the person requiring treatment:

- (a) has not made a health care decision in a directive that clearly anticipates and gives directions relating to treatment for the specific circumstances that exist; and
 - (b) either:
 - (i) has not appointed a proxy in a directive or has not had a personal guardian appointed for him or her; or
 - (ii) has appointed a proxy in a directive or has had a personal guardian appointed for him or her, but the proxy or personal guardian is unwilling, is unavailable or does not have capacity to make a health care decision.
- (2) A health care decision made by the nearest relative pursuant to subsection (1) has the same effect as a health care decision made by a person who has the capacity to make a health care decision respecting a proposed treatment.
- (3) The nearest relative shall act:
- (a) according to the wishes expressed by the person requiring treatment while the person had capacity to make a health care decision, if the nearest relative has knowledge of the person's wishes; or
 - (b) according to what the nearest relative believes to be in the best interests of the person requiring treatment, if the nearest relative has no knowledge of the person's wishes.
- (4) If a person requiring treatment has no nearest relative, or if a reasonable attempt to find the nearest relative has been made but the nearest relative cannot be found, and the person requiring treatment lacks the capacity to make a health care decision, a treatment provider may provide treatment in accordance with subsection (5).
- (5) A treatment provider may provide treatment in a manner and to the extent that is reasonably necessary and in the best interests of a person described in subsection (4) without receiving a health care decision from the nearest relative if:
- (a) the treatment provider believes that the proposed treatment is needed; and
 - (b) another treatment provider agrees in writing that the proposed treatment is needed.

2015, cH-0.002, s.16.

Substitute health care decision-making for members of religious orders

17(1) This section applies to a person who is a professed member of a religious order prescribed in the regulations.

(2) The ecclesiastical authority designated by the religious order and prescribed in the regulations may make a health care decision on behalf of a person described in subsection (1) who lacks the capacity to make a health care decision if the person:

(a) has not made a health care decision in a directive that clearly anticipates and gives directions relating to treatment for the specific circumstances that exist; and

(b) either:

(i) has not appointed a proxy in a directive or has not had a personal guardian appointed for him or her; or

(ii) has appointed a proxy in a directive or has had a personal guardian appointed for him or her, but the proxy or personal guardian is unwilling, is unavailable or does not have capacity to make a health care decision.

(3) The provisions of this Act with respect to a nearest relative apply, with any necessary modification, to the ecclesiastical authority making a health care decision on behalf of a person described in subsection (1).

2015, c H-0.002, s.17.

Day-to-day treatments

18(1) In this section:

“caregiver” means a person who occupies a position designated in the regulations as a caregiver position; (*« soignant »*)

“day-to-day treatment” means any type of treatment prescribed in the regulations as a day-to-day treatment. (*« traitement quotidien »*)

(2) If a person requires a day-to-day treatment but lacks the capacity to make a health care decision with respect to the day-to-day treatment, and neither a proxy, nearest relative nor personal guardian is readily available, the person’s caregiver may make a health care decision for the person requiring the day-to-day treatment.

2015, c H-0.002, s.18.

Admission to health care facility

19 For the purposes of making a health care decision pursuant to this Act, a proxy or a nearest relative, as the case may be, may apply to a treatment provider to admit a person requiring treatment to a health care facility.

2015, c H-0.002, s.19.

Admission to long-term care facility

20(1) In this section:

“**long-term care**” means care that, because of a person’s injury, illness or other disability, is required over a prolonged period; (*« soins de longue durée »*)

“**long-term care facility**” means a facility designated in the regulations as a long-term care facility. (*« établissement de soins de longue durée »*)

(2) If a person requires long-term care but lacks the capacity to make a health care decision, the personal guardian, proxy, nearest relative or two treatment providers, in that order of priority, may:

- (a) apply to admit the person to a long-term care facility; and
- (b) accept placement of the person in a long-term care facility.

2015, cH-0.002, s.20.

Personal health information to be disclosed

21 Notwithstanding any other Act or law, personal health information is to be disclosed by a treatment provider to a proxy, nearest relative or personal guardian if it is necessary to enable that person to make an informed health care decision.

2015, cH-0.002, s.21.

Court application

22(1) An interested person may apply to the Court of Queen’s Bench for an order granting the relief set out in subsection (2).

(2) If the Court of Queen’s Bench is satisfied that a proxy or nearest relative is not acting in good faith and in accordance with this Act, the court may:

- (a) suspend or terminate the appointment of the proxy or the authority of the nearest relative and rescind any health care decision made by the proxy or nearest relative;
- (b) in the case of a proxy, substitute the court’s health care decision for any health care decision made by the proxy, except if the directive appoints at least one other proxy who is willing, is available and has capacity to make a health care decision; and
- (c) in the case of a nearest relative, appoint another person from the list set out in subsection 15(1) to make a health care decision.

(3) A health care decision made by the court pursuant to clause (2)(b) is to be made in accordance with section 12.

2015, cH-0.002, s.22.

Decisions of guardians and proxies

23(1) This section applies if a personal guardian has been appointed on behalf of a person, and the person has also appointed a proxy.

- (2) If a directive clearly anticipates and gives directions relating to treatment for the specific circumstances that exist, the proxy and personal guardian shall follow a health care decision in the directive.
- (3) Subject to subsection (4), if the directive does not clearly anticipate and give directions relating to treatment for the specific circumstances that exist and a health care decision of the personal guardian is inconsistent with a health care decision of the proxy, the proxy's health care decision is preferred to the personal guardian's health care decision.
- (4) If a health care decision of a personal guardian is inconsistent with a health care decision of a proxy, either party may apply to the Court of Queen's Bench for direction respecting which health care decision is to be followed.
- (5) An enduring power of attorney granted in accordance with *The Powers of Attorney Act, 2002* does not give the attorney the authority to make health care decisions pursuant to this Act.

2015, cH-0.002, s.23.

PART IV General

Immunity

- 24(1) No action or proceeding lies or shall be commenced against a treatment provider acting in good faith and in accordance with this Act who provides or refrains from providing treatment:
- (a) in accordance with a directive or a health care decision made by a proxy, nearest relative or personal guardian;
 - (b) contrary to a directive, if the treatment provider did not know of the existence of the directive or its contents or believed that the directive had been revoked; or
 - (c) in accordance with subsections 16(4) and (5).
- (2) No action or proceeding lies or shall be commenced against a proxy, nearest relative or personal guardian:
- (a) who acts in good faith and in accordance with this Act; and
 - (b) who fails to make a health care decision in accordance with a directive.
- (3) No action or proceeding lies or shall be commenced against a person acting in good faith and in accordance with this Act if that person relies on a directive and is unaware that the directive:
- (a) was not executed in accordance with this Act;
 - (b) had been revoked at the time it was relied on; or
 - (c) was made by a person under the age of 16 years or a person who did not have the capacity to make health care decisions.

2015, cH-0.002, s.24.

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Entitlement not void

25 Persons who sign directives as witnesses or for the persons making the directives, persons who are appointed as proxies and the spouses of those persons are not disentitled, by reason only of the signing or the appointment, to any of the following:

- (a) a beneficial devise, bequest or other disposition or appointment of or affecting real or personal property pursuant to the will of the person making the directive;
- (b) the proceeds of an insurance policy on the life of the person making the directive;
- (c) a share, pursuant to *The Intestate Succession Act, 1996*, of the estate of the person making the directive.

2015, cH-0.002, s.25.

Offence

26(1) No person shall:

- (a) without the consent of the person making a directive, wilfully conceal, cancel, obliterate, damage, alter, falsify or forge a directive, an amendment to a directive or a revocation of a directive; or
 - (b) coerce, require or place undue influence on another person to make a directive.
- (2) Every person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000, to imprisonment for a term of not more than three months or to both.
- (3) No person convicted of an offence pursuant to clause (1)(a) or (b) is entitled to any of the following:

- (a) a beneficial devise, bequest or other disposition or appointment of or affecting real or personal property pursuant to the will of the person making the directive;
- (b) the proceeds of an insurance policy on the life of the person making the directive;
- (c) a share, pursuant to *The Intestate Succession Act, 1996*, of the estate of the person making the directive.

2015, cH-0.002, s.26.

Regulations

27 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;

- (b) prescribing a form or forms that may be used in making a directive pursuant to this Act;
- (c) prescribing methods, other than writing, that may be used in making a directive pursuant to this Act;
- (d) prescribing religious orders and ecclesiastical authorities designated by religious orders for the purposes of section 17;
- (e) for the purposes of section 18:
 - (i) designating positions as caregiver positions; and
 - (ii) prescribing treatments or types of treatments as day-to-day treatments;
- (f) for the purposes of section 20, designating facilities as long-term care facilities;
- (g) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (h) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

2015, cH-0.002, s.27.

PART V

Repeal, Consequential Amendment and Coming into Force

S.S. 1997, cH-0.001 repealed

28 *The Health Care Directives and Substitute Health Care Decision Makers Act* is repealed.

2015, cH-0.002, s.28.

29 **Dispensed.** This section makes consequential amendments to another Act. The amendments have been incorporated into the corresponding Act.

Coming into force

30 This Act comes into force on proclamation.

2015, cH-0.002, s.30.

