Uniform Health-Care Decisions Act (2023) ("UHCDA")	Utah Advance Health Care Directive Act (uniform and subst. similar language is highlighted)	Analysis of Substantive Differences
SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Health-Care Decisions Act (2023).	**Utah Advance Health Care Directive Act (not Uniform)**	
SECTION 2. DEFINITIONS. In this [act]: (1) "Advance health-care directive" means a power of attorney for health care, health-care instruction, or both. The term includes an advance mental health-care directive. (2) "Advance mental health-care directive" means a power of attorney for health care or health-care instruction, or both, created under Section 9. (3) "Agent" means an individual appointed in a power of attorney for health care to make a health-care decision for the individual who made the appointment. The term includes a co-agent or alternate agent appointed under Section 20. (4) "Capacity" has the meaning in Section 3. (5) "Cohabitant" means each of two individuals who have been living together as a couple for at least one year after each became an adult or was emancipated and who are not married to each other[or are not [domestic partners] with each other]. (6) "Default surrogate" means an individual authorized under Section 12 to make a health-care decision for another individual. (7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. (8) "Family member" means a spouse,[domestic	**75A-3-101: Definitions for this chapter:** As used in this chapter: (1) "Adult" means an individual who is: (a) at least 18 years old; or (b) an emancipated minor. (2) "Advance health care directive": (a) includes: (i) a designation of an agent to make health care decisions for an adult when the adult cannot make or communicate health care decisions; or (ii) an expression of preferences about health care decisions; (b) may take one of the following forms: (i) a written document, voluntarily executed by an adult in accordance with the requirements of this chapter; or (ii) a witnessed oral statement, made in accordance with the requirements of this chapter; and (c) does not include an order for life sustaining treatment. (3) "Agent" means an adult designated in an advance health care directive to make health care decisions for the declarant. (4) "APRN" means an individual who is: (a) certified or licensed as an advance practice registered nurse under Subsection 58-31b-301(2) (e); (b) an independent practitioner; and (c) acting within the scope of practice for that individual, as provided by law, rule, and specialized certification and training in that individual's area of practice. (5) "Best interest" means that the benefits to the individual resulting from a treatment outweigh the	Definitions of agent are substantively similar. The UHCDA includes a mental-healthcare directive in the definition of a "advance health-care directive", while the AHCDA does not. The UHCDA also provides a definition for "advance mental health-care directive". The UHCDA includes a co-agent or alternate appointed agent under its definition for "agent" while the AHCDA definition does not mention these additional options. The UHCDA provides a broader and singular definition for "capacity", while Utah bifurcates the term into capacity to appoint an agent and "health care decision making capacity." The UHCDA provides a more succinct definition of "default surrogate."

partner,] adult child, parent, or grandparent, or an adult descendant of a spouse,[domestic partner,] child, parent, or grandparent. (9) “Guardian” means a person appointed under other law by a court to make decisions regarding the personal affairs of an individual, which may include health-care decisions. The term does not include a guardian ad litem. (10) “Health care” means care or treatment or a service or procedure to maintain, monitor, diagnose, or otherwise affect an individual’s physical or mental illness, injury, or condition. The term includes mental health care. (11) “Health-care decision” means a decision made by an individual or the individual’s surrogate regarding the individual’s health care, including: (A) selection or discharge of a health-care professional or health-care institution; (B) approval or disapproval of a diagnostic test, surgical procedure, medication, therapeutic intervention, or other health care; and (C) direction to provide, withhold, or withdraw artificial nutrition or hydration, mechanical ventilation, or other health care. (12) “Health-care institution” means a facility or agency licensed, certified, or otherwise authorized or permitted by other law to provide health care in this state in the ordinary course of business. (13) “Health-care instruction” means a direction, whether or not in a record, made by an individual that indicates the individual’s goals, preferences, or wishes concerning the provision, withholding, or withdrawal of health care. The term includes a direction intended to be effective if specified	burdens to the individual resulting from the treatment, taking into account: (a) the effect of the treatment on the physical, emotional, and cognitive functions of the individual; (b) the degree of physical pain or discomfort caused to the individual by the treatment or the withholding or withdrawal of treatment; (c) the degree to which the individual's medical condition, the treatment, or the withholding or withdrawal of treatment, result in a severe and continuing impairment of the dignity of the individual by subjecting the individual to humiliation and dependency; (d) the effect of the treatment on the life expectancy of the individual; (e) the prognosis of the individual for recovery with and without the treatment; (f) the risks, side effects, and benefits of the treatment, or the withholding or withdrawal of treatment; and (g) the religious beliefs and basic values of the individual receiving treatment, to the extent these may assist the decision maker in determining the best interest. (6) “Capacity to appoint an agent” means that the adult understands the consequences of appointing a particular individual as agent. (7) "Child" means the same as that term is defined in Section 75-1-201. (8) "Declarant" means an adult who has completed and signed or directed the signing of an advance health care directive. (9) "Default surrogate" means the adult who may make decisions for an individual when either: (a) an agent or guardian has not been appointed; or (b) an agent is not able, available, or willing to make decisions for an adult. (10) "Emergency medical services provider" means a person that is licensed, designated, or certified under Title 53, Chapter 2d, Emergency Medical Services Act.	The UHCDA provides a definition of “family member” while Utah does not despite using the term within the law. The UHCDA provides a more clear definition of the term “guardian.” The UHCDA includes a definition for “health-care professional”, while Utah uses the term “health care provider” that is in a different law and much more complicated with a similar meaning. The UHCDA provides a more concrete message in its definition of “health-care institution”, while the uses a more confusing definition found within another provision of the state law under “health-care facility”. The UHCDA provides a definition for the term “health-care instruction”, while Utah lacks a definition for the term “instruction” Utah does not specifically address mental health care. The UHCDA provides a definition of “person”, while Utah uses the term person numerous times but does not provide a definition. Utah does not define Power of attorney [for health care].

conditions arise. (14) “Health-care professional” means a physician or other individual licensed, certified, or otherwise authorized or permitted by other law of this state to provide health care in this state in the ordinary course of business or the practice of the physician’s or individual’s profession. (15) “Individual” means an adult or emancipated minor. (16) “Mental health care” means care or treatment or a service or procedure to maintain, monitor, diagnose, or otherwise affect an individual’s mental illness or other psychiatric, psychological, or psychosocial condition. (17) “Nursing home” means a nursing facility as defined in 42 U.S.C. Section 1396r(a)(1)[, as amended] or skilled nursing facility as defined in 42 U.S.C. Section 1395i– 3(a)(1)[, as amended]. (18) “Person” means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity. (19) “Person interested in the welfare of the individual” means: (A) the individual’s surrogate; (B) a family member of the individual; (C) the cohabitant of the individual; (D) a public entity providing health care case management or protective services to the individual; (E) a person appointed under other law to make decisions for the individual under a power of attorney for finances; or (F) a person that has an ongoing personal or	(11) "Estate" means the same as that term is defined in Section 75-1-201. (12) "Generally accepted health care standards": (a) is defined only for the purpose of: (i) this chapter and does not define the standard of care for any other purpose under Utah law; and (ii) enabling health care providers to interpret the statutory form set forth in Section 75A-3-303; and (b) means the standard of care that justifies a provider in declining to provide life sustaining care because the proposed life sustaining care: (i) will not prevent or reduce the deterioration in the health or functional status of an individual; (ii) will not prevent the impending death of an individual; or (iii) will impose more burden on the individual than any expected benefit to the individual. (13) "Guardian" means the same as that term is defined in Section 75-1-201. *("Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant) to testamentary or court appointment, or by written instrument as provided in Section 75-5-202.5.* *("Guardian" does not include a person who is merely a guardian ad litem.)* (14) "Health care" means any care, treatment, service, or procedure to improve, maintain, diagnose, or otherwise affect an individual's physical or mental condition. (15) "Health care decision": (a) means a decision about an adult's health care made by, or on behalf of, an adult, that is communicated to a health care provider; (b) includes: (i) selection and discharge of a health care provider and a health care facility; (ii) approval or disapproval of diagnostic tests, procedures, programs of medication, and orders not to resuscitate; and (iii)	The UHCDA definition of “reasonably available” provides additional information regarding what “reasonably available” means as it pertains to an agent or default surrogate that is not included in the Utah definition. Utah does not define “record.” Utah does not define “sign,” a definition most useful with non-traditional signatures.

professional relationship with the individual, including a person that has provided educational or health-care services or supported decision making to the individual. (20) “Physician” means an individual authorized to practice medicine under [cite to state law authorizing the practice of medicine][or osteopathy under [cite to state law authorizing the practice of osteopathy]]. (21) “Power of attorney for health care” means a record in which an individual grants an agent the authority to make health-care decisions for the individual. (22) “Reasonably available” means being able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of an individual’s health-care situation. When used to refer to an agent or default surrogate, the term includes being willing and able to comply with the duties under Section 17 in a timely manner considering the urgency of an individual’s health-care situation. (23) “Record” means information: (A) inscribed on a tangible medium; or (B) stored in an electronic or other medium and retrievable in perceivable form. (24) “Responsible health-care professional” means: (A) a health-care professional designated by an individual or the individual’s surrogate to have primary responsibility for the individual’s health care or for overseeing a course of treatment; or (B) in the absence of a designation under subparagraph (A), or if the professional designated under subparagraph (A) is not	directions to provide, withhold, or withdraw artificial nutrition and hydration and all other forms of health care; and (c) does not include decisions about an adult's financial affairs or social interactions other than as indirectly affected by the health care decision. (16) "Health care decision making capacity" means an adult's ability to make an informed decision about receiving or refusing health care, including: (a) the ability to understand the nature, extent, or probable consequences of health status and health care alternatives; (b) the ability to make a rational evaluation of the burdens, risks, benefits, and alternatives of accepting or rejecting health care; and (c) the ability to communicate a decision. (17) "Health care facility" means: (a) a health care facility as defined in Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection; and (b) private offices of physicians, dentists, and other health care providers licensed to provide health care under Title 58, Occupations and Professions. (18) "Health care provider" means the same as that term is defined in Section 78B-3-403, except that "health care provider" does not include an emergency medical services provider. *"Health care provider" includes any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders health care or professional services as a hospital, health care facility, physician, physician assistant, registered nurse, licensed practical nurse, nurse-midwife, licensed direct-entry midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, physical therapist assistant, podiatric physician, psychologist, chiropractic physician, naturopathic*	

reasonably available, a health-care professional who has primary responsibility for overseeing the individual's health care or for overseeing a course of treatment. (25) "Sign" means, with present intent to authenticate or adopt a record: (A) execute or adopt a tangible symbol; or (B) attach to or logically associate with the record an electronic symbol, sound, or process. (26) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe. (27) "Supported decision making" means assistance, from one or more persons of an individual's choosing, that helps the individual make or communicate a decision, including by helping the individual understand the nature and consequences of the decision. (28) "Surrogate" means: (A) an agent; (B) a default surrogate; or (C) a guardian authorized to make health-care decisions.	*physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical social worker, certified social worker, social service worker, marriage and family counselor, practitioner of obstetrics, licensed athletic trainer, or others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons and officers, employees, or agents of any of the above acting in the course and scope of their employment.* (19) "Incapacitated" means the same as that term is defined in Section 75-1-201. (20) "Incapacity" means the same as that term is defined in Section 75-1-201. (21) (a) "Life sustaining care" means any medical intervention, including procedures, administration of medication, or use of a medical device, that maintains life by sustaining, restoring, or supplanting a vital function. (b) "Life sustaining care" does not include care provided for the purpose of keeping an individual comfortable. (22) "Minor" means an individual who: (a) is under 18 years old; and (b) is not an emancipated minor. (23) "Order for life sustaining treatment" means an order related to life sustaining treatment, on a form designated by the Department of Health and Human Services under Section 75-3-106, that gives direction to health care providers, health care facilities, and emergency medical services providers regarding the specific health care decisions of the individual to whom the order relates. (24) "Parent" means the same as that term is defined in Section 75-1-201. (25) "Personal representative" means the same as that term is defined in Section 75-1-201.	

	(26) "Physician" means a physician and surgeon or osteopathic surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical Practice Act. (27) "Physician assistant" means an individual licensed as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act. (28) "Reasonably available" means: (a) readily able to be contacted without undue effort; and (b) willing and able to act in a timely manner considering the urgency of the circumstances. (29) "State" means the same as that term is defined in Section 75-1-201. *""State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of the United States, or a Native American tribe or band recognized by federal law or formally acknowledged by a state."* (30) "Substituted judgment" means the standard to be applied by a surrogate when making a health care decision for an adult who previously had the capacity to make health care decisions, which requires the surrogate to consider: (a) specific preferences expressed by the adult: (i) when the adult had the capacity to make health care decisions; and (ii) at the time the decision is being made; (b) the surrogate's understanding of the adult's health care preferences; (c) the surrogate's understanding of what the adult would have wanted under the circumstances; and (d) to the extent that the preferences described in Subsections (30)(a) through (c) are unknown, the best interest of the adult. (31) "Surrogate" means a health care decision maker who is: (a) an appointed agent; (b) a default surrogate under	

	the provisions of Section 75A-3-203; or (c) a guardian. (32) "Trust" means the same as that term is defined in Section 75-1-201. (33) "Will" means the same as that term is defined in Section 75-1-201.	
SECTION 3. CAPACITY. (a) An individual has capacity for the purpose of this [act] if the individual: (1) is able and willing to communicate a decision independently or with appropriate services, technological assistance, supported decision making, or other reasonable accommodation; and (2) in making or revoking: (A) a health-care decision, understands the nature and consequences of the decision, including the primary risks and benefits of the decision; (B) a health-care instruction, understands the nature and consequences of the instruction, including the primary risks and benefits of the choices expressed in the instruction; and (C) an appointment of an agent under a health-care power of attorney or identifying a default surrogate under Section 12(b)(1), recognizes the identity of the individual being appointed or identified and understands the general nature of the relationship of the individual making the appointment or identification with the individual being appointed or identified. (b) The right of an individual who has capacity to make a decision about the individual's own health	**75A-3-101: Definitions for this chapter:** (6) "Capacity to appoint an agent" means that the adult understands the consequences of appointing a particular individual as agent. **75A-3-302 Capacity to complete an advance health care directive.** (1) An adult is presumed to have the capacity to complete an advance health care directive. (2) An adult who is found to lack health care decision making capacity under the provisions of Section 75A-3-201: (a) lacks the capacity to give an advance health care directive, including Part II of the form created in Section 75A-3-303, or any other substantially similar form expressing a health care preference; and (b) may retain the capacity to appoint an agent and complete Part I of the form created in Section 75A-3-303. (3) The following factors shall be considered by a health care provider, attorney, or court when determining whether an adult described in Subsection (2)(b) has retained the capacity to appoint an agent: (a) whether the adult has expressed over time an intent to appoint the same person as agent; (b) whether the choice of agent is consistent with past relationships and patterns of behavior between the adult	Utah does not include information regarding how capacity is defined outside of the capacity to appoint an agent. The UHCDA provides a clear definition for what capacity means, also recognizing an individual's functional capacity - clarifying that the individual may lack capacity to make one decision but retain capacity to make other decisions.

care is not affected by whether the individual creates or revokes an advance health- care directive.	and the prospective agent, or, if inconsistent, whether there is a reasonable justification for the change; and (c) whether the adult's expression of the intent to appoint the agent occurs at times when, or in settings where, the adult has the greatest ability to make and communicate decisions.	
SECTION 4. PRESUMPTION OF CAPACITY; OVERCOMING PRESUMPTION. (a) An individual is presumed to have capacity to make a health-care decision, make or revoke a health-care instruction, and make or revoke a power of attorney for health care unless: (1) a court has found that the individual lacks capacity to do so; or (2) the presumption is rebutted under subsection (b). (b) Subject to Sections 5 and 6, a presumption under subsection (a) may be rebutted by a finding that an individual lacks capacity: (1) subject to subsection (c), made on the basis of a contemporaneous examination by any of the following: (A) a physician; (B) a psychologist licensed or otherwise authorized to practice in this state; [or] (C)]an individual with training and expertise in the finding of lack of capacity who is licensed or otherwise authorized to practice in this state as: (i) a physician assistant; (ii) an advanced practice registered nurse; or (iii) a social worker; or]	**75A-3-201 Capacity to make health care decisions -- Presumption -- Overcoming presumption.** (1) An adult is presumed to have: (a) health care decision making capacity; and (b) capacity to make or revoke an advance health care directive. (2) To overcome the presumption of capacity described in Subsection (1)(a), a physician, an APRN, or a physician assistant who has personally examined the adult and assessed the adult's health care decision making capacity must: (a) find that the adult lacks health care decision making capacity; (b) record the finding in the adult's medical chart including an indication of whether the adult is likely to regain health care decision making capacity; and (c) make a reasonable effort to communicate the determination to: (i) the adult; (ii) other health care providers or health care facilities that the person who makes the finding would routinely inform of such a finding; and (iii) if the adult has a surrogate, any known surrogate. (4) A health care provider or health care facility that relies on a surrogate to make decisions on behalf of an adult	Similar provisions addressing the presumption of capacity and overcoming this presumption. However, the UHCDA expands the list of which qualified health care professionals to make a lack of capacity determination, including mental health medical professionals. Utah is much more restrictive on which medical professionals can make this determination. The rUHCHDA also specifically mentions who may *not* make a determination of capacity.

(D) a responsible health-care professional not described in subparagraph (A)[,] [or] (B)[, or (C)] if: (i) the individual about whom the finding is to be made is experiencing a health condition requiring that a decision regarding health-care treatment be made promptly to avoid loss of life or serious harm to the health of the individual; and (ii) an individual listed in subparagraph (A)[,] [or] (B)[, or (C)] is not reasonably available; (2) made in accordance with accepted standards of the profession and the scope of practice of the individual making the finding and to a reasonable degree of certainty; and (3) documented in a record signed by the individual making the finding that includes an opinion of the cause, nature, extent, and probable duration of the lack of capacity. (c) The following individuals may not make the finding under subsection (b): (1) a family member of the individual presumed to have capacity; (2) the cohabitant of the individual or a descendant of the cohabitant; or (3) the individual's surrogate, a family member of the surrogate, or a descendant of the surrogate. (d) If the finding under subsection (b) was based on a condition the individual no longer has or a responsible health-care professional	has an ongoing obligation to consider whether the adult continues to lack health care decision making capacity. (5) If at any time a health care provider finds, based on an examination and assessment, that the adult has regained health care decision making capacity, the health care provider shall record the results of the assessment in the adult's medical record, and the adult can direct the adult's own health care.	

subsequently has good cause to believe the individual has capacity, the individual is presumed to have capacity unless a court finds the individual lacks capacity or the presumption is rebutted under subsection (b).		
SECTION 5. NOTICE OF FINDING OF LACK OF CAPACITY; RIGHT TO OBJECT. (a) An individual who makes a finding under Section 4(b), as soon as reasonably feasible, shall inform the individual about whom the finding was made or the individual's responsible health-care professional of the finding. (b) A responsible health-care professional who is informed of a finding under Section 4(b), as soon as reasonably feasible, shall inform the individual about whom the finding was made and the individual's surrogate. (c) An individual found under Section 4(b) to lack capacity may object to the finding by orally informing a responsible health-care professional, in a record provided to a responsible health-care professional or the health-care institution in which the individual resides or is receiving care, or by another act that clearly indicates the individual's objection. (d) If the individual objects under subsection (c), the finding under Section 4(b) is not sufficient to rebut the presumption of capacity in Section 4(a), and the individual must be treated as having capacity, unless: (1) the individual withdraws the objection; (2) a court finds that the individual lacks the presumed capacity; (3) the individual is experiencing a health condition requiring that a decision regarding health-care	**75A-3-201 Capacity to make health care decisions -- Presumption -- Overcoming presumption.** (3) (a) An adult who is found to lack health care decision making capacity in accordance with Subsection (2) may, at any time, challenge the finding by: (i) submitting to a health care provider a written notice stating that the adult disagrees with the physician's or physician assistant's finding; or (ii) orally informing the health care provider that the adult disagrees with the finding. (b) A health care provider who is informed of a challenge under Subsection (3)(a), shall, if the adult has a surrogate, promptly inform the surrogate of the adult's challenge. (c) A surrogate informed of a challenge to a finding under this Section, or the adult if no surrogate is acting on the adult's behalf, shall inform the following of the adult's challenge: (i) any other health care providers involved in the adult's care; and (ii) the health care facility, if any, in which the adult is receiving care. (d) Unless otherwise ordered by a court, a finding, under Subsection (2), that the adult lacks health care decision making capacity, is not in effect if the adult challenges the finding under Subsection (3)(a). (e) If an adult does not challenge the finding described in Subsection (2), the health care provider and health care	Similar to above, the right to object between the two laws is similar. However, the UHCDA provides a more robust framework for how an objection to a finding of lack of capacity may be overcome.

treatment be made promptly to avoid imminent loss of life or serious harm to the health of the individual; or (4) subject to subsection (e), the finding is confirmed by a second finding made by an individual authorized under Section 4(b)(1) who: (A) did not make the first finding; (B) is not a family member of the individual who made the first finding; and (C) is not the cohabitant of the individual who made the first finding or a descendant of the cohabitant. (e) A second finding that the individual lacks capacity under subsection (d)(4) is not sufficient to rebut the presumption of capacity if the individual is requesting the provision or continuation of life-sustaining treatment and the finding is being used to make a decision to withhold or withdraw the treatment. (f) A health-care professional who is informed of an objection under subsection (c), as soon as reasonably feasible, shall: (1) communicate the objection to a responsible health-care professional; and (2) document the objection and the date of the objection in the individual's medical record or communicate the objection and the date of the objection to an administrator with responsibility for medical records of the health-care institution providing health care to the individual, who shall document the objection and the date of the objection in the individual's medical record.	facility may rely on a surrogate, pursuant to the provisions of this chapter, to make health care decisions for the adult.	
SECTION 6. JUDICIAL REVIEW OF FINDING OF LACK OF CAPACITY.	N/A	Utah does not address judicial review of a finding of lack of capacity.

(a) An individual found under Section 4(b) to lack capacity, a responsible health-care professional, the health-care institution providing health care to the individual, or a person interested in the welfare of the individual may petition the [insert name of the appropriate court in the state for capacity cases] in the [county] in which the individual resides or is located to determine whether the individual lacks capacity. (b) The court in which a petition under subsection (a) is filed shall appoint [legal counsel to represent the individual if the individual does not have legal counsel] [a guardian ad litem]. The court shall hear the petition [as soon as possible but not later than [seven] days after the petition is filed]. As soon as possible[, but not later than [seven] days after the hearing], the court shall determine whether the individual lacks capacity. The court may determine that the individual lacks capacity only if the court finds by clear and convincing evidence that the individual lacks capacity.		
SECTION 7. HEALTH-CARE INSTRUCTION. (a) An individual may create a health-care instruction that expresses the individual's preferences for future health care, including preferences regarding: (1) health-care professionals or health-care institutions;	**75A-3-301 Advance health care directive -- Appointment of agent -- Powers of agent.** (1) (a) An adult may make an advance health care directive in which the adult may: (i) appoint a health care agent or choose not to appoint a health care agent; (ii) give directions for the care of the adult after the adult loses health care decision making	The UHCDA divides advance directives into health-care instructions and powers of attorney for health care, going into further detail in addressing each. Utah law addresses both (or their equivalent) in this provision. Neither require notarization.

(2) how a health-care decision will be made and communicated; (3) persons that should or should not be consulted regarding a health-care decision; (4) a person to serve as guardian for the individual if one is appointed; and (5) an individual to serve as a default surrogate. (b) A health-care professional to whom an individual communicates or provides an instruction under subsection (a) shall document the instruction and the date of the instruction in the individual's medical record or communicate the instruction and date of the instruction to an administrator with responsibility for medical records of the health-care institution providing health care to the individual, who shall document the instruction and the date of the instruction in the individual's medical record. (c) A health-care instruction made by an individual that conflicts with an earlier health- care instruction made by the individual, including an instruction documented in a medical order, revokes the earlier instruction to the extent of the conflict. (d) A health-care instruction may be in the same record as a power of attorney for health care.	capacity; (iii) choose not to give directions; (iv) state conditions that must be met before life sustaining treatment may be withheld or withdrawn; (v) authorize an agent to consent to the adult's participation in medical research; (vi) nominate a guardian; (vii) authorize an agent to consent to organ donation; (viii) expand or limit the powers of a health care agent; and (ix) designate the agent's access to the adult's medical records. (b) An advance health care directive may be oral or written. (c) An advance health care directive shall be witnessed by a disinterested adult. The witness may not be: (i) the person who signed the directive on behalf of the declarant; (ii) related to the declarant by blood or marriage; (iii) entitled to any portion of the declarant's estate according to the laws of intestate succession of this state or under any will or codicil of the declarant; (iv) the beneficiary of any of the following that are held, owned, made, or established by, or on behalf of, the declarant: (A) a life insurance policy; (B) a trust; (C) a qualified plan; (D) a pay on death account; or (E) a transfer on death deed; (v) entitled to benefit financially upon the death of the declarant;	

	(vi) entitled to a right to, or interest in, real or personal property upon the death of the declarant; (vii) directly financially responsible for the declarant's medical care; (viii) a health care provider who is: (A) providing care to the declarant; or (B) an administrator at a health care facility in which the declarant is receiving care; or (ix) the appointed agent. (d) The witness to an oral advance health care directive shall state the circumstances under which the directive was made. (2) An agent appointed under the provisions of this Section may not be a health care provider for the declarant, or an owner, operator, or employee of the health care facility at which the declarant is receiving care unless the agent is related to the declarant by blood, marriage, or adoption.	
SECTION 8. POWER OF ATTORNEY FOR HEALTH CARE. (a) An individual may create a power of attorney for health care to appoint an agent to make health-care decisions for the individual. (b) An individual is disqualified from acting as agent for an individual who lacks capacity to make health-care decisions if: (1) a court finds that the potential agent poses a danger to the individual's well being, even if the court does not issue a [restraining order] against the potential agent; or (2) the potential agent is an owner, operator, employee, or contractor of a nursing home [or other	N/A	Utah's POA is incorporated into the above section, whereas the UHCDA addresses subsets of advance directives – health-care instructions and POAs – in greater detail.

residential care facility] in which the individual resides or is receiving care unless the owner, operator, employee, or contractor is a family member of the individual, the cohabitant of the individual, or a descendant of the cohabitant. (c) A health-care decision made by an agent is effective without judicial approval. (d) A power of attorney for health care must be in a record, signed by the individual creating the power, and signed by an adult witness who: (1) reasonably believes the act of the individual to create the power of attorney is voluntary and knowing; (2) is not: (A) the agent appointed by the individual; (B) the agent's spouse[, domestic partner,] or cohabitant; (C) if the individual resides or is receiving care in a nursing home[or other residential care facility], the owner, operator, employee, or contractor of the nursing home [or other residential care facility]; and (3) is present when the individual signs the power of attorney or when the individual represents that the power of attorney reflects the individual's wishes. (e) A witness under subsection (d) is considered present if the witness and the individual are: (1) physically present in the same location; (2) using electronic means that allow for real time audio and visual transmission and communication in real time to the same extent as if the witness and the individual were physically present in the same location; or		

(3) able to speak to and hear each other in real time through audio connection if: (A) the identity of the individual is personally known to the witness; or (B) the witness is able to authenticate the identity of the individual by receiving accurate answers from the individual that enable the authentication. (f) A power of attorney for health care may include a health-care instruction.		
SECTION 9. ADVANCE MENTAL HEALTH-CARE DIRECTIVE. (a) An individual may create an advance health-care directive that addresses only mental health care for the individual. The directive may include a health-care instruction, a power of attorney for health care, or both. (b) A health-care instruction under this Section may include: (1) a statement of the individual's general philosophy and objectives regarding mental health care; (2) the individual's specific goals, preferences, and wishes regarding the provision, withholding, or withdrawal of a form of mental health care, including: (A) preferences regarding professionals, programs, and facilities; (B) admission to a mental facility, including duration of admission; (C) preferences regarding medications; (D) a refusal to accept a specific type of mental health care, including a medication; and (E) preferences regarding crisis intervention.	**§ 26B-5-315. Declaration for mental health treatment—Form** A declaration for mental health treatment is available: https://nrc-pad.org/images/stories/PDFs/utahpadform.pdf https://le.utah.gov/xcode/Title26B/Chapter5/C26B-5-S315_2023050320230503.pdf	Utah does provide a declaration for mental health treatment. The form is more prescriptive than the guidance provided by UHCDA Section 9 and is contained within the Code section addressing mental health facilities – this suggests that this form may be executed within a facility, whereas the UHCDA contemplates an advance mental health-care directive which may be executed in a different stage of advance planning.

(c) A power of attorney for health care under this Section may appoint an agent to make decisions only for mental health care. [(d) An individual may direct in an advance mental health-care directive that if the individual is experiencing a psychiatric or psychological event specified in the directive the individual may not revoke the directive or a part of the directive. (e) If an advance mental health-care directive includes a direction under subsection (d), the advance mental health-care directive must be in a record that is separate from any other advance health-care directive created by the individual, and signed by the individual creating the advance mental health-care directive and at least two adult witnesses who: (1) attest that to the best of their knowledge the individual: (A) understood the nature and consequences of the direction, including its risks and benefits; and (B) made the direction voluntarily and without coercion or undue influence; (2) are not: (A) the agent appointed by the individual; (B) the agent's spouse[, domestic partner,] or cohabitant; and (C) if the individual resides in a nursing home [or other residential care facility] the owner, operator, employee, or contractor of the nursing home [or other residential care facility]; and (3) are physically present in the same location as the		

individual.]		

SECTION 10. RELATIONSHIP OF ADVANCE MENTAL HEALTH-CARE DIRECTIVE AND OTHER ADVANCE HEALTH-CARE DIRECTIVE. (a) If a direction in an advance mental health-care directive conflicts with a direction in another advance health-care directive, the later direction revokes the earlier direction to the extent of the conflict. (b) An individual's appointment under a power of attorney for health care of an agent to make decisions only for mental health care does not revoke an earlier appointment of an agent under a power of attorney for health care to make other health-care decisions for the individual. A later appointment revokes the authority of an agent under the earlier appointment to make decisions about mental health care unless otherwise specified in the power of attorney making the later appointment. (c) An individual's appointment under a power of attorney for health care of an agent to make health-care decisions for the individual other than decisions about mental health care made after appointment of an agent authorized to make only mental health-care decisions, does not revoke the appointment of the agent authorized to make only mental health-care decisions.	N/A	While Utah does provide for an advance mental-health directive, it is not incorporated into the Utah advance directive section.
SECTION 11. OPTIONAL FORM. The following form may be used to create an advance health-care directive.	**Utah Advance Health Care Directive** (Pursuant to Utah Code Section 75-2a-117, effective 2009)*	The UHCDA form was intentionally drafted in plain language, making this

ADVANCE HEALTH-CARE DIRECTIVE HOW YOU CAN USE THIS FORM You can use this form if you wish to name someone to make health-care decisions for you in case you cannot make decisions for yourself. This is called giving the person a power of attorney for health care. This person is called your Agent. You can also use this form to state your wishes, preferences, and goals for health care, and to say if you want to be an organ donor after you die. YOUR NAME AND DATE OF BIRTH Name: Date of birth: **PART A: NAMING AN AGENT** This part lets you name someone else to make health-care decisions for you. You may leave any item blank. 1. NAMING AN AGENT I want the following person to make health-care decisions for me if I cannot make decisions for myself: Name: Optional contact information (it is helpful to include information such as address, phone, and email):	Name: _____ __Street Address: _____ __City, State, Zip Code: _____ __Telephone: (___) _____ Cell Phone: (___) _____ Birth Date: _____ **Part I: My Agent (Health Care Power of Attorney)** A. No Agent If you do not want to name an agent, initial the box below, then go to Part II; do not name an agent in B or C below. No one can force you to name an agent. I do not want to choose an agent. B. My Agent Agent's Name: _____ Street Address: _____ City, State, Zip Code: _____ Home Phone: (___) _____ Cell Phone: (___) _____ Work Phone: (___) _____	form easily understood and accessible to a broad audience. The UHCDA form presumes less technical knowledge. For example, the UHCDA form explains what an agent is and does, whereas the Utah form presumes this knowledge.

2. NAMING AN ALTERNATE AGENT I want the following person to make health-care decisions for me if I cannot and my Agent is not able or available to make them for me: Name: Optional contact information (it is helpful to include information such as address, phone, and email): 3. LIMITING YOUR AGENT'S AUTHORITY I give my Agent the power to make all health-care decisions for me if I cannot make those decisions for myself, except the following: (If you do not add a limitation here, your Agent will be able make all health-care decisions that an Agent is permitted to make under state law.)	C. My Alternate Agent This person will serve as your agent if your agent, named above, is unable or unwilling to serve. Alternate Agent's Name: _____ Street Address:_____ City, State, Zip Code: _____ Home Phone: (____) _____ Cell Phone: (____) _____ Work Phone: (____) _____ D. Agent's Authority If I cannot make decisions or speak for myself (in other words, after my physician or another authorized provider finds that I lack health care decision making capacity under Section 75-2a-104 of the Advance Health Care Directive Act), my agent has the power to make any health care decision I could have made such as, but not limited to: Consent to, refuse, or withdraw any health care. This may include care to prolong my life such as food and fluids by tube, use of antibiotics, CPR (cardiopulmonary resuscitation), and dialysis, and mental health care, such as convulsive therapy and psychoactive medications. This authority is subject to any limits in paragraph F of Part I or in Part II of this directive. Hire and fire health care providers. Ask questions and get answers from health care providers. Consent to admission or	

	transfer to a health care provider or health care facility, including a mental health facility, subject to any limits in paragraphs E or F of Part I. Get copies of my medical records. Ask for consultations or second opinions. My agent cannot force health care against my will, even if a physician has found that I lack health care decision making capacity. E. Other Authority My agent has the powers below only if I initial the “yes” option that precedes the statement. I authorize my agent to: ____YES ____ NO Get copies of my medical records at any time, even when I can speak for myself. ____YES ____ NO Admit me to a licensed health care facility, such as a hospital, nursing home, assisted living, or other facility for long-term placement other than convalescent or recuperative care. F. Limits/Expansion of Authority I wish to limit or expand the powers of my health care agent as follows: _____ _____ ____ G. Nomination of Guardian Even though appointing an agent should help you avoid a guardianship, a guardianship may still be necessary. Initial the "YES" option if you want the court to appoint your agent or, if your agent is unable or unwilling to serve, your alternate agent, to serve as your guardian, if a guardianship is ever necessary. ____YES ____ NO I, being	Nomination of a guardian is located in UHCDA form Section C.

PART B: HEALTH CARE INSTRUCTIONS This part lets you state your priorities for health care and to state types of health care you do and do not	of sound mind and not acting under duress, fraud, or other undue influence, do hereby nominate my agent, or if my agent is unable or unwilling to serve, I hereby nominate my alternate agent, to serve as my guardian in the event that, after the date of this instrument, I become incapacitated. Name: _____ H. Consent to Participate in Medical Research ____YES ____ NO I authorize my agent to consent to my participation in medical research or clinical trials, even if I may not benefit from the results. I. Organ Donation ____YES ____ NO If I have not otherwise agreed to organ donation, my agent may consent to the donation of my organs for the purpose of organ transplantation. H. Consent to Participate in Medical Research ____YES ____ NO I authorize my agent to consent to my participation in medical research or clinical trials, even if I may not benefit from the results.	The UHCDA POA portion (Part A) does not delve into specific duties or instructions for agents, but rather focuses on appointment and limits on authority. Specific authority for medical research and organ and tissue donation is located in UHCDA Parts C & D.

want. 1. INSTRUCTIONS ABOUT LIFE-SUSTAINING TREATMENT This Section gives you the opportunity to say how you want your Agent to act while making decisions for you. You may mark or initial each item. You also may leave any item blank. Treatment. Medical treatment needed to keep me alive but not needed for comfort or any other purpose should (mark or initial all that apply): ( ) Always be given to me. (If you mark or initial this preference, you should not mark or initial other preferences in the "treatment" Section.). ( ) Not be given to me if I have a condition that is not curable and is expected to cause my death soon, even if treated. ( ) Not be given to me if I am unconscious and I am not expected to be conscious again. ( ) Not be given to me if I have a medical condition from which I am not expected to recover that prevents me from communicating with people I care about, caring for myself, and recognizing family and friends. ( ) Other (write what you want or do not want): Food and liquids. If I can't swallow and staying alive requires me to get food or liquids through a tube or other means for the rest of my life, then food or liquids should (mark or initial all that apply): ( ) Always be given to me. (If you mark or initial	**Part II: My Health Care Wishes (Living Will)** I want my health care providers to follow the instructions I give them when I am being treated, even if my instructions conflict with these or other advance directives. My health care providers should always provide health care to keep me as comfortable and functional as possible. Choose only one of the following options, numbered Option 1 through Option 4, by placing your initials before the numbered statement. Do not initial more than one option. If you do not wish to document end-of-life wishes, initial Option 4. You may choose to draw a line through the options that you are not choosing. Option 1 I choose to let my agent decide. I have chosen my agent carefully. I have talked with my agent about my health care wishes. I trust my agent to make the health care decisions for me that I would make under the circumstances. Additional comments: Option 2 I choose to prolong life. Regardless of my condition or prognosis, I want my health care team to try to prolong my life as long as possible within the limits of	Again, here the UHCDA form is drafted clearly and concisely with the intentional use of plain language to be readily understood by a layperson who may be drafting this document without assistance. Rather than providing somewhat binary options, the UHCDA provides an "a la carte" menu for care as well as providing priorities to give an individual's agent a better sense of what and how care should be provided.

this preference, you should not mark or initial other preferences in the “food and liquids” Section”). ( ) Not be given to me if I have a condition that is not curable and is expected to cause me to die soon, even if treated. ( ) Not be given to me if I am unconscious and am not expected to be conscious again. ( ) Not be given to me if I have a medical condition from which I am not expected to recover that prevents me from communicating with people I care about, caring for myself, and recognizing family and friends. ( ) Other (write what you want or do not want): Pain relief. If I am in significant pain, care that will keep me comfortable but is likely to shorten my life should (mark or initial all that apply): ( ) Always be given to me. (If you mark or initial this preference, you should not mark or initial other preferences in the “pain relief” Section.). ( ) Never be given to me. (If you mark or initial this preference, you should not mark or initial other preferences in the “pain relief” Section.) ( ) Be given to me if I have a condition that is not curable and is expected to cause me to die soon, even if treated. ( ) Be given to me if I am unconscious and am not expected to be conscious again. ( ) Be given to me if I have a medical condition from which I am not expected to recover that prevents me from	generally accepted health care standards. Additional comments: Option 3 I choose not to receive care for the purpose of prolonging life, including food and fluids by tube, antibiotics, CPR, or dialysis being used to prolong my life. I always want comfort care and routine medical care that will keep me as comfortable and functional as possible, even if that care may prolong my life. If you choose this option, you must also choose either (a) or (b), below Initial (a) I put no limit on the ability of my health care provider or agent to withhold or withdraw life sustaining care. Initial (b) My health care provider should withhold or withdraw life-sustaining care if at least one of the initialed conditions is met: If you selected (a), above, do not choose any options under (b). I have a progressive illness that will cause death I am close to death and am unlikely to recover I cannot communicate and it is unlikely that my condition will improve I do not recognize my friends or family and it is unlikely that my condition will improve I am in a persistent vegetative state Additional comments: Option 4 I do not wish to express preferences about health care wishes in this directive. Additional comments Name: _____	

communicating with people I care about, caring for myself, and recognizing family and friends.
( ) Other (write what you want or do not want):

2. MY PRIORITIES
You can use this Section to indicate what is important to you, and what is not important to you. This information can help your Agent make decisions for you if you cannot. It also helps others understand your preferences.

You may mark or initial each item. You also may leave any item blank.

Staying alive as long as possible even if I have substantial physical limitations is: ( ) Very important

( ) Somewhat important ( ) Not important

Staying alive as long as possible even if I have substantial mental limitations is: ( ) Very important

( ) Somewhat important ( ) Not important

Being free from significant pain is: ( ) Very important

( ) Somewhat important ( ) Not important

Being independent is:
( ) Very important

Additional instructions about your health care wishes:
_____
_____
_____
_____
_____
_____

If you do not want emergency medical service providers to provide CPR or other life sustaining measures, you must work with a physician or APRN to complete an order that reflects your wishes on a form approved by the Utah Department of Health.

Part III: Revoking or Changing a Directive

I may revoke or change this directive by: Writing "void" across the form, burning, tearing, or otherwise destroying or defacing this document or directing another person to do the same on my behalf; Signing a written revocation of the directive, or directing another person to sign a revocation on my behalf; Stating that I wish to revoke the directive in the presence of a witness who: is 18 years of age or older; will not be appointed as my agent in a substitute directive; will not become a default surrogate if the directive is revoked; and signs and dates a written document confirming my statement; or Signing a new

( ) Somewhat important ( ) Not important Having my Agent talk with my family before making decisions about my care is: ( ) Very important ( ) Somewhat important ( ) Not important Having my Agent talk with my friends before making decisions about my care is: ( ) Very important ( ) Somewhat important ( ) Not important 3. OTHER INSTRUCTIONS You can use this Section to provide more information about your goals, values, and preferences for treatment, including care you want or do not want. You can also use this Section to name anyone who you do not want to make decisions for you under any conditions. **PART C: OPTIONAL SPECIAL POWERS & GUIDANCE** This part lets you give your Agent additional powers, and to provide more guidance about your wishes. You may mark or initial each item. You also may leave any item blank. 1. OPTIONAL SPECIAL POWERS My Agent can do the following things ONLY if I have marked or initialed them below: ( ) Admit me as a voluntary patient to a facility	directive. (If you sign more than one Advance Health Care Directive, the most recent one applies.) **Part IV: Making My Directive Legal** I sign this directive voluntarily. I understand the choices I have made and declare that I am emotionally and mentally competent to make this directive. My signature on this form revokes any living will or power of attorney form naming a health care agent that I have completed in the past. Date _____ Signature _____ City, County, and State of Residence I have witnessed the signing of this directive, I am 18 years of age or older, and I am not: 1. Related to the declarant by blood or marriage; 2. Entitled to any portion of the declarant's estate according to the laws of intestate succession of any state or jurisdiction or under any will or codicil of the declarant, 3. A beneficiary of a life insurance policy, trust, qualified plan, pay on death account, or transfer or death deed that is held, owned, made, or established by, or on behalf of, the declarant; 4. Entitled to benefit financially upon the death of the declarant; 5. Entitled to a right to, or interest in, real or personal property upon the death of the declarant; 6.	The Utah form provides some additional detail for signature and witness requirements in Part E,

for mental health treatment for up to 7 days, or 14 days, or 30 days (circle one). (If I do not mark or initial this, my Agent MAY NOT admit me as a voluntary patient to this type of facility.) ( ) Place me in a nursing home for more than 100 days even if my needs can be met somewhere else, I am not terminally ill, and I object. (If I do not mark or initial this, my Agent MAY NOT do this.) 2. ACCESS TO MY HEALTH INFORMATION My Agent may obtain, examine, and share information about my health needs and health care if I am not able to make decisions for myself. If I mark or initial below, my Agent may also do that at any time my Agent thinks it will help me. ( ) I give my Agent permission to obtain, examine, and share information about my health needs and health care whenever they think it will help me. 3. FLEXIBILITY FOR MY AGENT Mark or initial below if you want to give your Agent flexibility in following instructions you provide in this form. If you do not, your Agent must follow the instructions even if they think something else would be better for you. ( ) I give my Agent permission to be flexible in applying these instructions if my Agent thinks it would be in my best interest based on what my Agent knows about me.	Directly financially responsible for the declarant's medical care; 7. A health care provider who is providing care to the declarant or an administrator at a health care facility in which the declarant is receiving care; or 8. The appointed agent or alternate agent. _____ __ Signature of Witness _____ __ Street Address _____ __ Printed Name of Witness _____ City State Zip If the witness is signing to confirm an oral directive, describe below the circumstances under which the directive was made. _____ _____ _____ _____ _____ Name: _____	although the UHCDA does so effectively in a more abbreviated manner. The Utah form does not appear to include voluntary admission for mental health treatment. The Utah form does not appear to explicitly give an option to grant an agent access to health information.

4. NOMINATION OF GUARDIAN

Here you can say who you would want as your guardian if you needed one. A guardian is a person appointed by a court to make decisions for someone who cannot make decisions.
Filling this out does NOT mean you want or need a guardian.

If a court appoints a guardian to make personal decisions for me, I want the court to choose: ( ) My Agent named in this form. If my Agent cannot be a guardian, I want the
Alternate Agent named in this form.
( ) Other (write who you would want and their contact information):

PART D: ORGAN DONATION

This part lets you donate your organs after you die. You may leave any item blank.

1. DONATION
You may mark or initial one item.
( ) I donate my organs, tissues, and other body parts after I die, even if it requires maintaining treatments that conflict with other instructions I have put in this form, EXCEPT for those I list below (list any body parts you do NOT want to donate):

( ) I do not want my organs, tissues, or body parts donated to anybody for any reason.

2. PURPOSE OF DONATION You may mark or initial all that apply. If you do not mark any, your donation can be used for all of the below purposes. Organs, tissues, or body parts that I donate may be used for: ( ) Transplant ( ) Therapy ( ) Research ( ) Education ( ) All of the above **PART E: SIGNATURES REQUIRED ON THIS FORM** YOUR SIGNATURE Sign your name: Today's date: City/Town/Village and State (optional): SIGNATURE OF A WITNESS You need a witness if you are using this form to name an Agent. The witness must be an adult and cannot be the person you are naming as Agent or the Agent's spouse,[domestic partner,] or someone the Agent lives with as a couple. If you live or are receiving care in a nursing home, the witness cannot be an employee or contractor of the home or someone who owns or runs the home. Witness's name: Witness's signature: Date witness signed: (Only sign as a witness if you think that the person signing above is doing it voluntarily).		

PART F: INFORMATION FOR AGENTS 1. If this form names you as an Agent, you can make decisions about health care for the person who named you when they cannot make their own. 2. If you make a decision for the person, follow any instructions the person gave, including any in this form. 3. If you do not know what the person would want, make the decision that you think is in the person's best interest. To figure out what is in the person's best interest, consider the person's values, preferences, and goals if you know them or can learn them. Some of these preferences may be in this form. You should also consider any behavior or communication from the person that indicates what the person currently wants. 4. If this form names you as an Agent, you can also get and share the individual's health information. But unless the person has said so in this form, you can get or share this information only when the person cannot make their own decisions about their health care.		The Utah form does not provide such clear information for agents.
SECTION 12. DEFAULT SURROGATE. (a) A default surrogate may make a health-care decision for an individual who lacks capacity to make health-care decisions and for whom an agent, or guardian authorized to make health-care decisions,	**75A-3-203 Default surrogates.** (1) (a) Any member of the class described in Subsection (1)(b) may act as an adult's surrogate if: (i) (A) the adult has not appointed an agent; (B) an appointed agent is not reasonably available; or	The UHCDA has an expanded list of who may serve as a default surrogate and bars a spouse in cases in which a petition for divorce, etc. has been

has not been appointed or is not reasonably available. (b) Unless the individual has an advance health-care directive that indicates otherwise, a member of the following classes, in descending order of priority, who is reasonably available and not disqualified under Section 14, may act as a default surrogate for the individual: (1) an adult who the individual has identified, other than in a power of attorney for health care, to make a health-care decision for the individual if the individual cannot make the decision; (2) the individual's spouse[or domestic partner], unless: (A) a petition for annulment, divorce, dissolution of marriage, legal separation, or termination has been filed and not dismissed or withdrawn; (B) a decree of annulment, divorce, dissolution of marriage, legal separation, or termination has been issued; (C) the individual and the spouse[or domestic partner] have agreed in a record to a legal separation; or (D) the spouse[or domestic partner] has [abandoned] the individual for more than one year; (3) the individual's adult child or parent; (4) the individual's cohabitant; (5) the individual's adult sibling; (6) the individual's adult grandchild or grandparent; (7) an adult not listed in paragraphs (1) through (6) who has assisted the individual with supported	(C) a guardian has not been appointed; and (ii) the member of the class described in Subsection (1)(b) is: (A) over 18 years old; (B) has health care decision making capacity; (C) is reasonably available; and (D) has not been disqualified by the adult or a court. (b) Except as provided in Subsection (1)(a), and subject to Subsection (1)(c), the following classes of the adult's family, in descending order of priority, may act as the adult's surrogate: (i) the adult's spouse, unless the adult is divorced or legally separated; or (ii) the following family members: (A) a child; (B) a parent; (C) a sibling; (D) a grandchild; or (E) a grandparent. (c) A person described in Subsection (1)(b), may not direct an adult's care if a person of a higher priority class is able and willing to act as a surrogate for the adult. (d) A court may disqualify a person described in Subsection (1)(b) from acting as a surrogate if the court finds that the person has acted in a manner that is inconsistent with the position of trust in which a surrogate is placed. (2) If the family members designated in Subsection (1)(b) are not reasonably available to act as a surrogate, a person who is 18 years old or older, other than those designated in Subsection (1) may act as a surrogate if the person:	filed, a decree has been issued, or in case of abandonment. Under (e), the UHCDA gives authority to a responsible health-care professional to disqualify a surrogate who they determine is unwilling, unable, or fails to comply with their duty. Utah requires court approval for this, which further delays what may be an urgent matter.

decision making routinely during the preceding six months; (8) the individual's adult stepchild not listed in paragraphs (1) through (7) whom the individual actively parented during the stepchild's minor years and with whom the individual has an ongoing relationship; or (9) an adult not listed in paragraphs (1) through (8) who has exhibited special care and concern for the individual and is familiar with the individual's personal values. (c) A responsible health-care professional may require an individual who assumes authority to act as a default surrogate to provide a declaration in a record under penalty of perjury stating facts and circumstances reasonably sufficient to establish the authority. (d) If a responsible health-care professional reasonably determines that an individual who assumed authority to act as a default surrogate is not willing or able to comply with a duty under Section 17 or fails to comply with the duty in a timely manner, the professional may recognize the individual next in priority under subsection (b) as the default surrogate. (e) A health-care decision made by a default surrogate is effective without judicial approval.	(a) has health care decision making capacity; (b) has exhibited special care and concern for the patient; (c) knows the patient and the patient's personal values; and (d) is reasonably available to act as a surrogate. (3) The surrogate shall communicate the surrogate's assumption of authority as promptly as practicable to the members of a class who: (a) have an equal or higher priority and are not acting as surrogate; and (b) can be readily contacted. (6) If reasonable doubt exists regarding the status of an adult claiming the right to act as a default surrogate, the health care provider may: (a) require the person to provide a sworn statement giving facts and circumstances reasonably sufficient to establish the claimed authority; or (b) seek a ruling from the court under Section 75A-3-107. (7) A health care provider may seek a ruling from a court pursuant to Section 75A-3-107 if the health care provider has evidence that a surrogate is making decisions that are inconsistent with an adult patient's wishes or preferences	
SECTION 13. DISAGREEMENT AMONG DEFAULT SURROGATES. (a) A default surrogate who assumes authority under Section 12 shall inform a responsible health-care	**75A-3-203 Default surrogates.** (4) A health care provider shall comply with the decision of a majority of the members of the highest priority class who have communicated their views to the provider if:	These two provisions are similar in effect However, the Uniform law provides for more mechanisms to seek conflict resolution among disagreeing members of a class.

professional if two or more members of a class under Section 12(b) have assumed authority to act as default surrogates and the members do not agree on a health-care decision. (b) A responsible health-care professional shall comply with the decision of a majority of the members of the class with highest priority under Section 12(b) who have communicated their views to the professional and the professional reasonably believes are acting consistent with their duties under Section 17. (c) If a responsible health-care professional is informed that the members of the class who have communicated their views to the professional are evenly divided concerning the health-care decision, the professional shall make a reasonable effort to solicit the views of other members of the class who are reasonably available but have not yet communicated their views to the professional. The professional, after the solicitation, shall comply with the decision of a majority of the members who have communicated their views to the professional and the professional reasonably believes are acting consistent with their duties under Section 17. (d) If the class remains evenly divided after the effort is made under subsection (c), the health-care decision must be made as provided by other law of this state regarding the treatment of an individual who is found to lack capacity.	(a) more than one member of the highest priority class assumes authority to act as default surrogate; (b) the members of the class do not agree on a health care decision; and (c) the health care provider is informed of the disagreement among the members of the class.	
SECTION 14. DISQUALIFICATION TO ACT AS DEFAULT SURROGATE. (a) An individual for whom a health-care decision	**75A-3-203 Default surrogates.** (5)	The UHCDA and Utah law have similar frameworks for disqualification to act as a default surrogate, but the UHCDA is more comprehensive.

would be made may disqualify another individual from acting as default surrogate for the first individual. The disqualification must be in a record signed by the first individual or communicated verbally or nonverbally to the individual being disqualified, another individual, or a responsible health-care professional. Disqualification under this subsection is effective even if made by an individual who lacks capacity to make an advance directive if the individual clearly communicates a desire that the individual being disqualified not make health care decisions for the individual. (b) An individual is disqualified from acting as a default surrogate for an individual who lacks capacity to make health-care decisions if: (c) a court finds that the potential default surrogate poses a danger to the individual's well being, even if the court does not issue a [restraining order] against the potential surrogate; (d) the potential default surrogate is an owner, operator, employee, or contractor of a nursing home [or other residential care facility] in which the individual is residing or receiving care unless the owner, operator, employee, or contractor is a family member of the individual, the cohabitant of the individual or a descendant of the cohabitant; or (e) the potential default surrogate refuses to provide a timely declaration under Section 12(c).	(a) An adult may at any time disqualify a default surrogate, including a member of the adult's family, from acting as the adult's surrogate by: (i) a signed writing; (ii) personally informing a witness of the disqualification; or (iii) informing the surrogate of the disqualification. (b) Disqualification of a surrogate is effective even if the adult has been found to lack health care decision making capacity. (6) If reasonable doubt exists regarding the status of an adult claiming the right to act as a default surrogate, the health care provider may: (a) require the person to provide a sworn statement giving facts and circumstances reasonably sufficient to establish the claimed authority; or (b) seek a ruling from the court under Section 75A-3-107.	
SECTION 15. REVOCATION.	**75A-3-307 Revocation of advance health care directive.**	The UHCDA outlines means by which an individual can*not* revoke a health

(a) An individual may revoke the appointment of an agent under a power of attorney for health care, the designation of a default surrogate, or a health-care instruction in whole or in part, unless: (1) a court finds the individual lacks capacity to do so; [or] (2) the individual is found under Section 4(b) to lack capacity to do so and, if the individual objects to the finding, the finding is confirmed under Section 5(d)[; or (3) the individual created an advance mental health-care directive that includes the provision under Section 9(d) and the individual is experiencing the psychiatric or psychological event specified in the directive]. (b) Revocation under subsection (a) may be by any act of the individual that clearly indicates that the individual intends to revoke the appointment, designation, or instruction, including an oral statement to a health-care professional. (c) Except as provided in Section 10, an advance health-care directive that conflicts with an earlier advance health-care directive revokes the earlier directive to the extent of the conflict. (d) Unless otherwise provided in an individual's advance health-care directive appointing an agent, the appointment of a spouse[or domestic partner] of an individual as agent for the individual is revoked by: (1) a filing for annulment, divorce, dissolution of marriage, legal separation, or termination that has not been dismissed or withdrawn; (2) a decree of annulment, divorce, dissolution of marriage, legal separation, or termination;	(1) An advance health care directive may be revoked at any time by the declarant by: (a) writing "void" across the document; (b) obliterating, burning, tearing, or otherwise destroying or defacing the document in any manner indicating an intent to revoke; (c) instructing another to do one of the acts described in Subsection (1)(a) or (b); (d) a written revocation of the directive signed and dated by: (i) the declarant; or (ii) an adult: (A) signing on behalf of the declarant; and (B) acting at the direction of the declarant; or (e) an oral expression of an intent to revoke the directive in the presence of a witness who is age 18 years old or older and who is not: (i) related to the declarant by blood or marriage; (ii) entitled to any portion of the declarant's estate according to the laws of intestate succession of this state or under any will or codicil of the declarant; (iii) the beneficiary of any of the following that are held, owned, made, or established by, or on behalf of, the declarant: (A) a life insurance policy; (B) a trust; (C) a qualified plan; (D) a pay on death account; or (E) a transfer on death deed; (iv) entitled to benefit financially upon the death of the declarant; (v) entitled to a right to, or interest in, real or personal property upon the death of the declarant; (vi) directly financially responsible for the declarant's medical care;	care directive, leaving revocation more flexible.

(3) the individual and the spouse[or domestic partner] have agreed in a record to a legal separation; or (4) [abandonment] of the individual for more than one year by the individual's spouse[or domestic partner].	(vii) a health care provider who is: (A) providing care to the declarant; or (B) an administrator at a health care facility in which the declarant is receiving care; or (viii) the adult who will become agent or default surrogate after the revocation. (2) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes the designation of a spouse as an agent, unless: (a) otherwise specified in the decree; or (b) the declarant has affirmed the intent to retain the agent subsequent to the annulment, divorce, or legal separation. (3) An advance health care directive that conflicts with an earlier advance health care directive revokes the earlier directive to the extent of the conflict.	
SECTION 16. VALIDITY OF ADVANCE HEALTH-CARE DIRECTIVE; CONFLICT WITH OTHER LAW. (a) An advance health-care directive created outside this state is valid if it complies with: (1) the law of the state specified in the directive or, if a state is not specified, the state in which the individual created the directive; or (2) this [act]. (b) A person may assume without inquiry that an advance health-care directive is genuine, valid, and still in effect, and may implement and rely on it, if the		A comparable provision does not appear in the relevant Utah law.

person does not have good cause to believe the directive is invalid or has been revoked. (c) An advance health-care directive or a revocation of a directive may not be denied legal effect or enforceability solely because it is in electronic form. (d) Evidence relating to an advance health-care directive, revocation of a directive, or a signature on a directive or revocation may not be excluded in a proceeding solely because the evidence is in electronic form. (e) This [act] does not affect the validity of an electronic record or signature that is valid under [cite to state's Uniform Electronic Transactions Act]. (f) If this [act] conflicts with other law of this state relating to the creation, execution, implementation, or revocation of an advance health-care directive, this [act] prevails.		
SECTION 17. DUTIES OF AGENT AND DEFAULT SURROGATE. (a) An agent or default surrogate has a fiduciary duty to the individual for whom the agent or default surrogate is acting when exercising or purporting to exercise a power under Section 18. (b) An agent or default surrogate shall make a health-care decision in accordance with the direction of the individual in an advance health-care directive and other goals, preferences and wishes of the individual	**75A-3-204 Surrogate decision making -- Scope of authority.** (1) A surrogate acting under the authority of Section 75A-3-203 or 75A-3-301 shall make health care decisions in accordance with: (a) the adult's current preferences, to the extent possible; (b) the adult's written or oral health care directions, if any; or (c) the substituted judgment standard. (2) A surrogate acting under the authority of Section 75A-3-203 or 75A-3-301:	The UHCDA outlines duties of agents and default surrogates more comprehensively. The UHCDA explicitly creates a fiduciary duty for agents and default surrogates.

to the extent known to or reasonably ascertainable by the agent or default surrogate. (c) If there is not a direction in an advance health-care directive and the goals, preferences and wishes of the individual regarding a health-care decision are not known or reasonably ascertainable by the agent or default surrogate, the agent or default surrogate shall make the decision in accordance with the agent's or default surrogate's determination of the individual's best interest. (d) In determining the individual's best interest under subsection (c), the agent or default surrogate shall: (1) give primary consideration to the individual's contemporaneous communications, including verbal and nonverbal expressions; (2) consider the individual's values to the extent known or reasonably ascertainable by the agent or default surrogate; and (3) consider the risks and benefits of a potential health-care decision. (e) An agent or default surrogate who is informed of a revocation of an advance health- care directive or disqualification of the agent or default surrogate, as soon as reasonably feasible, shall communicate the revocation or disqualification to a responsible health-care professional. or disqualification to promptly communicate it to a responsible health-care professional.	(a) may not admit the adult to a licensed health care facility for long-term custodial placement other than for assessment, rehabilitative, or respite care over the objection of the adult; and (b) may make health care decisions, including decisions to terminate life sustaining treatment for the adult patient in accordance with Subsection (1). (3) A surrogate acting under authority of this Section is not subject to civil or criminal liability or claims of unprofessional conduct for surrogate health care decisions made: (a) in accordance with this Section; and (b) in good faith.	

SECTION 18. POWERS OF AGENT AND DEFAULT SURROGATE. (a) Except as provided in subsection (c), the power of an agent or default surrogate commences when the individual is found under Section 4(b) or by a court to lack capacity to make a health-care decision. The power ceases if the individual later is found to have capacity to make a health-care decision, or the individual objects under Section 5(c) to the finding of lack of capacity under Section 4(b). If the power ceases because the individual objects under Section 5(c), the power resumes if the finding of lack of capacity is confirmed under Section 5(d)(4) or a court later finds that the individual lacks capacity to make a health-care decision. (b) An agent or default surrogate may request, receive, examine, copy, and consent to the disclosure of, medical and other health-care information about the individual if the individual would have the right to request, receive, examine, copy, or disclose the information. (c) A power of attorney for health care may provide that the power of an agent under subsection (b) commences on appointment. (d) If no other person is authorized to do so, an agent or default surrogate may apply for public or private health insurance and benefits on behalf of the individual. An agent or default surrogate who may apply for insurance and benefits does not, solely by		The UHCDA comprehensively outlines both the affirmative powers of agents and default surrogates as well as limitations on those powers (see below).

reason of the power, have a duty to apply for the insurance or benefits. (e) An agent or default surrogate has the following powers only if specifically authorized by the individual in an advance health-care directive in a record: (1) consent to voluntary admission of the individual to a facility for mental health treatment for a maximum of the number of days specified in the directive or [insert the number of days a guardian may commit an adult subject to guardianship without using the state's involuntary commitment procedure], whichever is less; and (2) consent to placement of the individual in a nursing home if the placement is intended to be for more than [100] days, even if: (A) an alternative living arrangement is reasonably feasible; (B) the individual objects to the placement; and (C) the individual is not terminally ill.		
SECTION 19. LIMITATION ON POWERS. (a) If an individual has a long-term disability requiring routine treatment by artificial nutrition, hydration, or mechanical ventilation and a history of using the treatment without objection, an agent or default		See above.

surrogate may not consent to withdrawal of the treatment unless: (1) the treatment is not necessary to sustain the individual's life or maintain the individual's well-being; (2) the individual has expressly authorized the withdrawal in a health-care instruction that has not been revoked; or (3) the individual has experienced a major reduction in health or functional ability from which the individual is not expected to recover, even with other appropriate treatment, and the individual has not: (A) given a direction inconsistent with withdrawal; or (B) communicated, by verbal or nonverbal expression, a desire for artificial nutrition, hydration, or mechanical ventilation. (b) A default surrogate may not make a health-care decision if, under other law of this state, the decision: (1) may not be made by a guardian; or (2) may be made by a guardian only if the court appointing the guardian specifically authorizes the guardian to make the decision.		
SECTION 20. CO-AGENTS AND ALTERNATE AGENT. (a) An individual in a power of attorney for health care may appoint multiple individuals to act as co-agents. Unless the power of attorney provides	N/A	Utah law does not appear to directly account for co-agents or alternate agents; *however*, the Utah form refers to alternate agents.

otherwise, each co-agent may exercise independent authority. (b) An individual in a power of attorney for health care may appoint multiple individuals to act as alternate agents if an agent resigns, dies, becomes disqualified, is not reasonably available, or otherwise is unwilling or unable to act as agent. (c) Unless the power of attorney provides otherwise, an alternate agent has the same authority as the original agent: (1) at any time the original agent is not reasonably available or is otherwise unwilling or unable to act, for the duration of the unavailability or inability to act; or (2) if the original agent and all other predecessor agents have resigned, died, or are disqualified from acting as agent.		
SECTION 21. DUTIES OF HEALTH-CARE PROFESSIONAL, RESPONSIBLE HEALTH-CARE PROFESSIONAL, AND HEALTH-CARE INSTITUTION. (a) A responsible health-care professional who is aware that an individual has been found to lack capacity to make a decision shall make a reasonable effort to determine if the individual has a surrogate. (b) If possible before implementing a health-care decision made by a surrogate, a responsible health-care professional as soon as reasonably feasible shall	**75A-3-207 Notification to health care provider -- Obligations of health care providers -- Liability.** (1) It is the responsibility of the declarant or surrogate, to the extent that the responsibility is not assigned to a health care provider or health care facility by state or federal law, to notify or provide for notification to a health care provider and a health care facility of: (a) the existence of a health care directive; (b) the revocation of a health care directive; (c) the existence or revocation of appointment of an agent or default surrogate; (d) the disqualification of a default surrogate; or (e) the appointment or revocation of appointment of a guardian.	These provisions are substantively similar, though the UHCDA is more succinct. The UHCDA also provides a more comprehensive framework for the transfer of care in case care cannot be or is refused to be provided.

communicate to the individual the decision made and the identity of the person making the decision. (c) A responsible health-care professional who makes or is informed of a finding that an individual lacks capacity to make a health-care decision or no longer lacks capacity, or that other circumstances exist that affect a health-care instruction or the authority of a surrogate, as soon as reasonably feasible shall: (1) document the finding or circumstance in the individual's medical record; and (2) if possible, communicate to the individual and the individual's surrogate the finding or circumstance and that the individual may object under Section 5(c) to a finding under Section 4(b). (d) A responsible health-care professional who is informed that an individual has created or revoked an advance health-care directive, or that a surrogate for an individual has been appointed, designated, or disqualified, shall: (1) document the information as soon as reasonably feasible in the individual's medical record; and (2) if evidence of the directive, revocation, appointment, designation, or disqualification is in a record, request a copy and, on receipt, cause the copy to be included in the individual's medical record. (e) Except as provided in subsections (f) and (g), a health-care professional or health-care institution	(4) (a) Health care providers and health care facilities shall: (i) cooperate with a person authorized under this chapter to make written directives concerning health care; (ii) unless the provisions of Subsection (4)(b) apply, comply with: (A) a health care decision of an adult; and (B) a health care decision made by the highest ranking surrogate then authorized to make health care decisions for an adult, to the same extent as if the decision had been made by the adult; (iii) before implementing a health care decision made by a surrogate, make a reasonable attempt to communicate to the adult on whose behalf the decision is made: (A) the decision made; and (B) the identity of the surrogate making the decision. (b) A health care provider or health care facility may decline to comply with a health care decision if: (i) in the opinion of the health care provider: (A) the adult who made the decision lacks health care decision making capacity; (B) the surrogate who made the decision lacks health care decision making capacity; (C) the health care provider has evidence that the surrogate's instructions are inconsistent with the adult's health care instructions, or, for a person who has always lacked health care decision making capacity, that the surrogate's instructions are inconsistent with the best interest of the adult; or (D) there is reasonable doubt regarding the status of a person claiming the right to act as a default surrogate, in which case the health care provider shall comply with Subsection 75A-3-203(6); or	

providing health care to an individual shall comply with: (1) a health-care instruction given by the individual regarding the individual's health care; (2) a reasonable interpretation by the individual's surrogate of an instruction given by the individual; and (3) a health-care decision for the individual made by the individual's surrogate in accordance with Sections 17 and 18 to the same extent as if the decision had been made by the individual at a time when the individual had capacity. (f) A health-care professional or a health-care institution may refuse to provide health care consistent with a health-care instruction or health-care decision if: (1) the instruction or decision is contrary to a policy of the health-care institution providing care to the individual that is based expressly on reasons of conscience and the policy was timely communicated to the individual or to the individual's surrogate; (2) the care would require care or treatment that is not available to the professional or institution; or (3) compliance would: (A) require the professional to provide care that is contrary to the professional's religious beliefs or	(ii) the health care provider declines to comply for reasons of conscience. (c) A health care provider or health care facility that declines to comply with a health care decision in accordance with Subsection (4)(b) must: (i) promptly inform the adult and any acting surrogate of the reason for refusing to comply with the health care decision; (ii) make a good faith attempt to resolve the conflict; and (iii) provide continuing care to the patient until the issue is resolved or until a transfer can be made to a health care provider or health care facility that will implement the requested instruction or decision. (d) A health care provider or health care facility that declines to comply with a health care instruction, after meeting the obligations set forth in Subsection (4)(c) may transfer the adult to a health care provider or health care facility that will carry out the requested health care decisions. (e) A health care facility may decline to follow a health care decision for reasons of conscience under Subsection (4)(b)(ii) if: (i) the health care decision is contrary to a policy of the facility that is expressly based on reasons of conscience; (ii) the policy was timely communicated to the adult and an adult's surrogate; (iii) the facility promptly informs the adult, if possible, and any surrogate then authorized to make decisions for the adult; (iv) the facility provides continuing care to the adult until a transfer can be made to a health care facility that will implement the requested instruction or decision; and (v) unless an adult or surrogate then authorized to make health care decisions for the adult refuses assistance,	

moral convictions if other law permits the professional to refuse to provide care for that reason; (B) require the professional or institution to provide care that is contrary to generally accepted health-care standards applicable to the professional or institution; or (C) violate a court order or other law. (g) A health-care professional or health-care institution that refuses care under subsection (f) shall: (1) as soon as reasonably feasible, inform the individual, if possible, and the individual's surrogate of the refusal; (2) immediately make a reasonable effort to transfer the individual to another health-care professional or health-care institution that is willing to comply with the instruction or decision; and: (A) if care is refused under subsection (f)(1) or (2), provide life-sustaining care and care needed to keep or make the individual comfortable, consistent with accepted medical standards to the extent feasible, until a transfer is made; or (B) if care is refused under subsection (f)(3), provide life-sustaining care and care needed to keep or make the individual comfortable, consistent with accepted medical standards, until a transfer is made or, if the professional or institution reasonably believes that a	immediately make all reasonable efforts to assist in the transfer of the adult to another health care facility that will carry out the instructions or decisions. (5) A health care provider and health care facility: (a) may not require or prohibit the creation or revocation of an advance health care directive as a condition for providing health care; and (b) shall comply with all state and federal laws and regulations governing advance health care directives.	

transfer cannot be made, for at least [10] days after the refusal.		
SECTION 22. DECISION BY GUARDIAN. (a) A guardian may refuse to comply with or revoke the individual's advance health-care directive only if the court appointing the guardian expressly orders the noncompliance or revocation. (b) Unless a court orders otherwise, a health-care decision made by an agent appointed by an individual subject to guardianship prevails over a decision of the guardian appointed for the individual.	**75A-3-205 Health care decisions by guardian.** (1) A court-appointed guardian shall comply with an adult's advance health care directive and may not revoke the adult's advance health care directive unless the court, for cause, expressly revokes the adult's directive. (2) A health care decision of an agent takes precedence over that of a guardian, in the absence of a court order to the contrary. (3) Except as provided in Subsections (1) and (2), a health care decision made by a guardian for the adult patient is effective without judicial approval. (4) A guardian is not subject to civil or criminal liability or to claims of unprofessional conduct for a surrogate health care decision made: (a) in good faith; and (b) in accordance with Section 75A-3-204.	The UHCDA addresses guardianship briefly, but does so more thoroughly (including immunity) in the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act.
SECTION 23. IMMUNITY. (a) A health-care professional or health-care institution acting in good faith is not subject to civil or criminal liability or to discipline for unprofessional conduct for: (1) complying with a health-care decision made for an individual by another person if compliance is based on a reasonable belief that the person has authority	**75A-3-207 Notification to health care provider -- Obligations of health care providers – Liability** […] (2) (a) A health care provider or health care facility is not subject to civil or criminal liability or to claims of unprofessional conduct for failing to act upon a health care directive, a revocation of a health care directive, or a disqualification of a surrogate until the health care provider or health care facility has received an oral directive from an adult or a copy of a written directive or	75A-3-207(3) is substantively similar to UHCDA 23(a).

to make the decision, including a decision to withhold or withdraw health care; (2) refusing to comply with a health-care decision made for an individual by another person if the refusal is based on a reasonable belief that the person lacked authority or capacity to make the decision; (3) complying with an advance health-care directive based on a reasonable belief that the directive is valid; (4) refusing to comply with an advance health-care directive based on a reasonable belief that the directive is not valid, including a reasonable belief that the advance directive was not made by the individual or after its creation was substantively altered by a person other than the individual who created it; [or] (5) determining that an individual who otherwise might be authorized to act as an agent or default surrogate is not reasonably available[; or (6) complying with an individual's direction under Section 9(d)]. (b) An agent, default surrogate, or individual with a reasonable belief that the individual is an agent or a default surrogate is not subject to civil or criminal liability or to discipline for unprofessional conduct for a health-care decision made in a good faith effort to comply with Section 17.	revocation of the health care directive, or the disqualification of the surrogate. (b) A health care provider and health care facility that is notified under Subsection (1) shall include in the adult patient's medical record: (i) the health care directive or a copy of it, a revocation of a health care directive, or a disqualification of a surrogate; and (ii) the date, time, and place in which any written or oral notice of the document described in this Subsection (2)(b) is received. (3) A health care provider or health care facility acting in good faith and in accordance with generally accepted health care standards is not subject to civil or criminal liability or to discipline for unprofessional conduct for: (a) complying with a health care decision made by an adult with health care decision making capacity; (b) complying with a health care decision made by a surrogate apparently having authority to make a health care decision for a person, including a decision to withhold or withdraw health care; (c) declining to comply with a health care decision of a surrogate based on a belief that the surrogate then lacked authority; (d) declining to comply with a health care decision of an adult who lacks decision making capacity; (e) seeking a judicial determination, or requiring a surrogate to obtain a judicial determination, under Section 75A-3-107 of: (i) the validity of a health care directive; (ii) the validity of directions from a surrogate or guardian; (iii) the decision making capacity of an adult who challenges a physician's finding of incapacity; or (iv) the authority of a guardian or surrogate; or (f) complying with an advance health care	

	directive and assuming that the directive was valid when made, and has not been revoked or terminated.	
SECTION 24. PROHIBITED CONDUCT; DAMAGES. (a) A person may not: (1) intentionally falsify, in whole or in part, an advance health-care directive; (2) for the purpose of frustrating the intent of the individual who made an advance health-care directive, or with knowledge that doing so is likely to frustrate the intent: (A) intentionally conceal, deface, obliterate, or delete the directive or a revocation of the directive without consent of the individual who created or revoked the directive; or (B) intentionally withhold knowledge of the existence or revocation of the directive from a responsible health-care professional or health-care institution providing health care to the individual who created or revoked the directive; or (3) coerce or fraudulently induce an individual to create, revoke, or refrain from creating or revoking an advance health-care directive or a part of a directive; (4) require or prohibit the creation or revocation of an advance health-care directive as a condition for providing health care.	**75A-3-308 Illegal destruction or falsification of advance health care directive.** (1) A person is guilty of a class B misdemeanor if the person: (a) willfully conceals, cancels, defaces, obliterates, or damages an advance health care directive of another without the declarant's consent; or (b) falsifies, forges, or alters a health care directive or a revocation of the advance health care directive of another person. (2) A person is guilty of criminal homicide if: (a) the person: (i) falsifies or forges the advance health care directive of an adult; or (ii) willfully conceals or withholds personal knowledge of: (A) the existence of an advance health care directive; (B) the revocation of an advance health care directive; or (C) the disqualification of a surrogate; and (b) the actions described in Subsection (2)(a) cause a withholding or withdrawal of life sustaining procedures contrary to the wishes of a declarant resulting in the death of the declarant.	The UHCDA provides for statutory damages, but not criminal penalties. Given these less severe penalties, the UHCDA provides a broader list of prohibited actions which may give rise to such an action. The UHCDA also provides for reasonable attorney's fees, court costs, and expenses; Utah law does not appear to do so (since it provides for criminal rather than civil penalties).

(b) An individual who is the subject of conduct prohibited under subsection (a), or the individual's estate, has a cause of action against a person that violates subsection (a) for statutory damages of $[25,000] or actual damages resulting from the violation, whichever is greater. (c) Subject to subsection (d), an individual who makes a health-care instruction, or the individual's estate, has a cause of action against a health-care professional or health-care care institution that intentionally violates Section 21 for statutory damages of $[50,000] or actual damages resulting from the violation, whichever is greater. (d) A health-care professional who is an [emergency medical responder] is not liable under subsection (c) for a violation of Section 21(e) that: (1) occurs in the course of providing care to an individual experiencing a health condition for which the professional reasonably believes the care was appropriate to avoid imminent loss of life or serious harm to the individual; (2) the failure to comply is consistent with accepted standards of the profession of the professional; and (3) the provision of care does not begin in a health-care institution in which the individual resides or was receiving care.		

(e) In an action under this Section, a prevailing plaintiff may recover reasonable attorney's fees, court costs, and other reasonable litigation expenses. (f) A cause of action or remedy under this Section is in addition to any cause of action or remedy under other law.		
SECTION 25. EFFECT OF COPY; CERTIFICATION OF PHYSICAL COPY. (a) A physical or electronic copy of an advance health-care directive, revocation of an advance health-care directive, or appointment, designation, or disqualification of a surrogate has the same effect as the original. (b) An individual may create a certified physical copy of an advance health-care directive or revocation of an advance health-care directive that is in electronic form by affirming under penalty of perjury that the physical copy is a complete and accurate copy of the directive or revocation.		Utah does not appear to address copies in this chapter.
SECTION 26. JUDICIAL RELIEF. (a) On petition of an individual, the individual's surrogate, a health-care professional or health-care institution providing health care to the individual, or a person interested in the welfare of the individual, the court may: (1) enjoin implementation of a health-care decision made by an agent or default surrogate on behalf of	**75A-3-107 Judicial relief** A court may enjoin or direct a health care decision, or order other equitable relief based on a petition filed by: (1) a patient; (2) an agent of a patient; (3) a guardian of a patient; (4) a default surrogate of a patient; (5) a health care provider of a patient; (6) a health care facility providing care for a patient; or	Though not exhaustive, the UHCDA specifies what injunctive relief may be sought by a petitioner.

the individual, on a finding that the decision is inconsistent with Section 17 or 18; (2) enjoin an agent from making a health-care decision for the individual, on a finding that the individual's appointment of the agent has been revoked or the agent: (A) is disqualified under Section 8(b); (B) is unable or unwilling to comply with Section 17; or (C) poses a danger to the individual's well being; (3) enjoin another individual from acting as a default surrogate, on a finding that the other individual acting as a default surrogate did not comply with Section 12 or the other individual: (A) is disqualified under Section 14; (B) is unable or unwilling to comply with Section 17; or (C) poses a danger to the first individual's well being; (4) order implementation of a health-care decision made: (A) by and for the individual; or (B) by an agent or default surrogate who is acting in compliance with the powers and duties of the agent or default surrogate. (b) In this [act], advocacy for the withholding or withdrawal of health care or mental health care from	(7) an individual who meets the requirements of Section 75A-3-203.	

an individual is not itself an indication that an agent or default surrogate, or a potential agent or default surrogate, poses a danger to the individual's well being. (c) A proceeding under this Section is governed by [cite to the state's rules of procedure or statutory provisions governing expedited proceedings and proceedings affecting persons found or alleged to lack capacity].		
SECTION 27. CONSTRUCTION. (a) This [act] does not authorize mercy killing, assisted suicide, or euthanasia. (b) This [act] does not affect other law of this state governing treatment for mental illness of an individual involuntarily committed to a [mental health-care institution] under [cite to state law governing involuntary commitments]. (c) Death of an individual caused by withholding or withdrawing health care in accordance with this [act] does not constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity. (d) This [act] does not create a presumption concerning the intention of an individual who has not created an advance health-care directive.	**75A-3-103 Effect of chapter.** This chapter does not: (1) create a presumption concerning the intention of an adult who has not made or who has revoked an advance health care directive; (2) authorize mercy killing, assisted suicide, or euthanasia; or (3) authorize the provision, withholding, or withdrawal of health care, to the extent prohibited by the laws of this state.	
SECTION 28. TRANSITIONAL AND SAVINGS PROVISIONS; INTERPRETATION.	**75A-3-104 Provisions cumulative with existing law.**	Similar in effect.

(a) This [act] applies to an advance health-care directive created before, on, or after [the effective date of this [act]]. (b) An advance health-care directive created before [the effective date of this [act]] is valid if it complies with this [act] or complied at the time of creation with the law of the state in which it was created. (c) This [act] does not affect the validity or effect of an act done before [the effective date of this [act]]. (d) An individual who assumed authority to act as default surrogate before [the effective date of this [act]] may continue to act as default surrogate until the individual for whom the default surrogate is acting has capacity or the default surrogate is disqualified, whichever occurs first. (e) An advance health-care directive created before, on, or after [the effective date of this [act]] must be interpreted in accordance with other law of this state, excluding the state's choice- of-law rules, at the time the directive is implemented.	The provisions of this chapter are cumulative with existing law regarding a person's right to consent or refuse to consent to medical treatment and do not impair any existing rights or responsibilities that a health care provider, a person, including a minor or incapacitated person, or a person's family or surrogate may have in regard to the provision, withholding or withdrawal of life sustaining procedures under the common law or statutes of the state. **75A-3-309 Reciprocity of advance health care directive -- Application of former provisions of law.** Unless otherwise provided in the advance health care directive: (1) a health care provider or health care facility may, in good faith, rely on any advance health care directive, power of attorney, or similar instrument: (a) executed in another state; or (b) executed prior to January 1, 2008, in this state; (2) an advance health care directive executed under the provisions of this chapter shall be governed pursuant to the provisions of this chapter that were in effect at that time, unless it appears from the directive that the declarant intended the current provisions of this chapter to apply; and (3) the advance health care directive described in Subsection (1) is presumed to comply with the requirements of this chapter.	
SECTION 29. UNIFORMITY OF APPLICATION AND CONSTRUCTION.	N/A	

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.		
SECTION 30. SEVERABILITY If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]	**75A-3-105 Severability** (1) If any one or more provision, Section, subsection, sentence, clause, phrase, or word of this chapter, or the application of this chapter to any person or circumstance, is found to be unconstitutional, the same is hereby declared to be severable and the balance of this chapter shall remain effective notwithstanding such unconstitutionality. (2) The Legislature hereby declares that it would have passed this chapter, and each provision, Section, subsection, sentence, clause, phrase, or word of this chapter, irrespective of the fact that any one or more provision, Section, subsection, sentence, clause, phrase, or word be declared unconstitutional.	
SECTION 32. EFFECTIVE DATE. This [act] takes effect . . .	Effective 9/1/2024	