

Selected State Laws Permitting Designation of Individuals to Make Decisions or Receive Benefits, Without Recognition of a Relationship

Even in states that bar same-sex couples from marrying, and that also prevent them from obtaining other forms of legal recognition for their relationships, it may be possible to secure legislation that provides some ways of helping to safeguard those couples and their families.

In some parts of the country, the political context may severely limit the potential for same-sex couples to obtain protections through marriage. Moreover, in some states, existing law may be interpreted to bar *all* means of providing legal recognition to same-sex relationships, not just through marriage. Even where legal recognition of a same-sex couple's relationship is not an option, however, advocates in a number of states have been able to obtain some legislative advances. In addition, laws that exist in many jurisdictions allowing any adult to designate another person to make decisions for them or to receive benefits can be helpful to same-sex couples denied many of the choices different-sex couples have.

This document assembles a few useful state laws to consider for legislative proposals that can provide protections to same-sex couples *without* legally recognizing their relationship. Painful as it is to live through this era when states have passed laws requiring discrimination against individuals in committed same-sex relationships, the harms to families in those states are real and, until existing restrictions are removed, those harms must be addressed as best as possible.

Conventional legal approaches already exist to help reduce the risk of certain harms, but there are still gaps to fill. For example, legal instruments such as health care proxies, advance directives, and powers of attorney can help committed same-sex couples somewhat. This document does *not* set forth each state's laws regarding those instruments. Instead, particular laws have been selected for highlighting in this document because those laws provide uniquely useful approaches that may fill the gaps.

One example of an unfilled gap relates to medical settings. Often, medical staff refuse to honor the role of a health care agent unless the patient is incapacitated. The patient may be conscious, but too ill to advocate for his or her needs, including the need to have the partner present. This means a partner may not be allowed to hold a patient's hand for a frightening ride in an ambulance, or to visit the patient in the hospital.

There are various ways to address this problem in a state that otherwise requires discrimination against those in same-sex relationships. The most direct legislative approach is to allow for a document drafted ahead of time designating any adult who may ride in an ambulance or visit in the hospital. It may be helpful if the statute allowing for this specifies that the designated individual has the same right as a spouse would and that, as in Illinois, specifies that the designation overrides any hospital rules that might otherwise provide for unequal treatment of those who are not married. Another legislative approach is to incorporate the "right to visit" into a health care proxy or a power of attorney that not only addresses other needs the couple may have, but also allows for text clarifying that the agent's right to visit is immediately operative (as opposed to having to wait for total incapacity), as exists in statutes passed in Illinois and Maryland. Alternatively, a Minnesota statute allows a designated health care agent to visit "regardless of whether the principal retains decision-making capacity."

An especially noteworthy approach comes from Connecticut, where a statute provides that one document can be used to afford protection under a wide variety of statutory provisions that give rights and benefits to designated individuals. This kind of approach may alleviate the problem of committed same-sex couples needing to pay for and carry around multiple legal documents. At the same time, and as a matter of good policy, the approach reaches a broader political constituency with its own needs, namely those individuals who seek to convey some rights and benefits to other individuals, but who choose not to marry or – in the case of some lesbian or gay individuals – who would choose not to marry even if the government had not already made that choice for them. Such individuals would not necessarily select the entire menu of rights and benefits in a statutory scheme like Connecticut's, and the menu may be able to be tailored in a way that meets their preferences.

This document does not identify which states require change, and does not include all pertinent laws. Nor does it recommend that any of the referenced laws should be adopted wholesale, because each law may have its own flaws. Rather, this document is intended as a useful resource for state political groups, who might first map out the law in their state, determine if changes are desirable and possible, and, if so, review some of the material gathered here to evaluate what is best to pursue for their individual state in light of all considerations.

If you think Lambda Legal could be of assistance in this process, please feel free to call us at the numbers below. We would be happy to assess whether and how we can help, and we would be grateful to hear of other designation laws that are uniquely helpful in some manner.

As a housekeeping matter, some state laws assembled in the following pages provide sample or required language for the forms that need to be filled in. To distinguish such language, we have put it in Courier font. The more conventional text of the law is in the Garamond font used in this section.

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I. Provisions for a Document Other than a Power of Attorney to Create Rights/Benefits for a Designee

Connecticut

- (a) Any person eighteen years of age or older may execute a document that designates another person eighteen years of age or older to make certain decisions on behalf of the maker of such document and have certain rights and obligations with respect to the maker of such document under section 1-1k [*including homicide victim's designee in definition of "victim of crime"*], subsection (b) of section 14-16 [*providing for inheritance of motor vehicle by decedent's designee*], subsection (b) of section 17a-543 [*allowing patient's designee to give medical consent*], subsection (a) of section 19a-279c [*allowing decedent's designee to make anatomical gift*], section 19a-550 [*requiring notice to nursing home patient's designee in case of involuntary transfer, assuring right of nursing home patient's designee to private visitation, and providing right of nursing home patient's designee to meet with families of other patients*], subsection (a) of section 19a-571 [*removing liability for removal of life support when patient's designee is consulted*], section 19a-580 [*requiring notification of patient's designee before removal of life support*], subsection (b) of section 19a-578 [*requiring physicians to record patient's wishes regarding care as communicated to patient's designee*], section 31-51jj [*requiring employers to notify employee in case of telephone call relating emergency involving employee's designee*], section 54-85d [*prohibiting adverse employment consequences for homicide victim's designee attending criminal court proceedings relating to death of victim*], section 54-91c [*providing for testimony or written statement of homicide victim's designee at sentencing or plea hearing*], section 54-126a [*providing for testimony or written statement of homicide victim's designee at parole hearing*] or chapter 968 [*including deceased victim's designee in definition of "dependent" for purposes of victim services*]. [FN1]
- (b) Such document shall be signed, dated and acknowledged by the maker before a notary public or other person authorized to take acknowledgments, and be witnessed by at least two persons. Such document may be revoked at any time by the maker, or by a person in the maker's presence and at the maker's direction, burning, canceling, tearing or obliterating such document or by the execution of a subsequent document by the maker in accordance with subsection (a) of this section.

- (c) Any person who is presented with a document executed in accordance with this section shall honor and give effect to such document for the purposes therein indicated.

[FN1] C.G.S.A. § 54-201 et seq.

Conn. Gen. Stat. Ann. § 1-56r

- (a) Any person eighteen years of age or older, and of sound mind, may execute in advance of such person's death a written document, subscribed by such person and attested by two witnesses, either: (1) Directing the disposition of such person's body upon the death of such person, which document may also designate an individual to have custody and control of such person's body and to act as agent to carry out such directions; or (2) if there are no directions for disposition, designating an individual to have custody and control of the disposition of such person's body upon the death of such person. Such disposition shall include, but not be limited to, cremation, incineration, disposition of remains, burial, method of interment and cryogenic preservation. Any such document may designate an alternate to an individual designated under subdivision (1) or (2) of this subsection.
- (b) No person may challenge a funeral director's decision to carry out the directions for disposition contained in a document executed for the purposes of subsection (a) of this section if the funeral director's decision and conduct in carrying out such directions for disposition in reliance on such document was reasonable and warranted under the circumstances.

Conn. Gen. Stat. Ann. § 45a-318

II. Provisions for Hospital Visitation by a Designee

Idaho

- (1) Any competent person may execute a document known as a "Living Will and Durable Power of Attorney for Health Care." Such document shall be in substantially the following form, or in another form that contains the elements set forth in this chapter. Any portions of the "Living Will and Durable Power of Attorney for Health Care" which are left blank by the person executing the document shall be deemed to be intentional and shall not invalidate the document.

LIVING WILL AND DURABLE POWER OF ATTORNEY FOR HEALTH CARE

* * *

A DURABLE POWER OF ATTORNEY FOR HEALTH CARE

* * *

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE. By this portion of this Directive, I create a durable power of attorney for health care. This power of attorney shall not be affected by my subsequent incapacity. This power shall be effective only when I am unable to communicate rationally.

* * *

4. STATEMENT OF DESIRES, SPECIAL PROVISIONS, AND LIMITATIONS.
. . . You can also include a statement of your desires concerning other matters relating to your health care, including a list of one or more persons whom you designate to be able to receive medical information about you and/or to be allowed to visit you in a medical institution. You can also make your desires known to your agent by discussing your desires with your agent or by some other means. . . .

Idaho Code Ann. § 39-4510

Illinois

- (a) The following form (sometimes also referred to in this Act as the "statutory health care power") may be used to grant an agent powers with respect to the principal's own health care . . . :

ILLINOIS STATUTORY SHORT FORM POWER OF ATTORNEY FOR HEALTH CARE

* * *

(THIS POWER OF ATTORNEY MAY BE AMENDED OR REVOKED BY YOU IN THE MANNER PROVIDED IN SECTION 4-6 OF THE ILLINOIS "POWERS OF ATTORNEY FOR HEALTH CARE LAW" (SEE THE BACK OF THIS FORM). ABSENT AMENDMENT OR REVOCATION, THE AUTHORITY GRANTED IN THIS POWER OF ATTORNEY WILL BECOME EFFECTIVE AT THE TIME THIS POWER IS SIGNED AND WILL CONTINUE UNTIL YOUR DEATH, AND BEYOND IF ANATOMICAL GIFT, AUTOPSY OR DISPOSITION OF REMAINS IS AUTHORIZED, UNLESS A LIMITATION ON THE BEGINNING DATE OR DURATION IS MADE)

* * *

- (b) . . . Without limiting the generality of the foregoing, the statutory health care power shall include the following powers, subject to any limitations appearing on the face of the form:

* * *

- (2) . . . The agent shall have the same right to visit the principal in the hospital or other institution as is granted to a spouse or adult child of the principal, any rule of the institution to the contrary notwithstanding.

755 Ill. Comp. Stat. 45/4-10

Louisiana

- A. Any person eighteen years or older may designate those individuals who will not be denied access to visit him during any stay in any hospital, nursing home, or other health care facility within the state of Louisiana.
- B. Nothing contained herein shall prohibit hospitals, nursing homes, or other health care facilities from restricting visits to standard designated hours, from restricting visits as the patient's medical condition may require, or from enforcing an injunction barring an individual from entering the premises.

La. Rev. Stat. Ann. § 40:2005

Maine

- 1. Designation of visitors. A patient in a hospital licensed pursuant to chapter 405 may designate persons to be considered as immediate family members for the purpose of granting visitation rights. The following provisions apply to the designation of visitors under this section.
 - A. The patient must be 18 years of age or older or a minor who is authorized by law to consent to health care.
 - B. The patient must be a patient in a critical care unit that restricts visitors to immediate family members, or emergency room that restricts visitors to immediate family members.
 - C. The patient may designate visitors under this section by communicating the designation to a health care provider at the hospital orally or in writing. The patient may designate visitors, change the designation or revoke the designation at any time.
 - D. A hospital shall provide to patients in the hospital a process by which to designate visitors under this section and shall note in the patient's medical record the names of designated visitors, the date of the designation and any changes in the designation.
 - E. Except as provided in subsection 2, a hospital may not deny visitation to the patient by a designated visitor during hospital visiting hours.

2. Exceptions. A hospital may deny visitation with a patient to any visitor designated under this section if:
 - A. The hospital denies all visitors;
 - B. The hospital determines that the presence of the visitor might endanger the health or safety of the patient or interfere with the primary operations of the hospital; or
 - C. The patient has communicated orally or in writing the choice not to visit with the visitor.
3. Rulemaking. By March 1, 2002, the department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Me. Rev. Stat. Ann. tit. 22, § 1711-D

Maryland

Maryland Advance Directive: Planning for Future Health Care
Decisions

* * *

PART I: SELECTION OF HEALTH CARE AGENT

* * *

C. Powers and Rights of Health Care Agent

* * *

I also want my agent to:

1. Ride with me in an ambulance if ever I need to be rushed to the hospital; and
2. Be able to visit me if I am in a hospital or any other health care facility.

* * *

H. Effectiveness of This Part

(Read both of these statements carefully. Then, initial one only.)

My agent's power is in effect:

1. Immediately after I sign this document, subject to my right to make any decision about my health care if I want and am able to.

((or))

2. Whenever I am not able to make informed decisions about my health care, either because the doctor in charge of my care (attending physician) decides that I have lost this ability **temporarily**, or my attending physician and a consulting doctor agree that I have lost this ability **permanently**.

Md. Code Ann., Health-Gen. § 5-603

Minnesota

Subd. 5. Visitation. A health care agent may visit the principal when the principal is a patient in a health care facility regardless of whether the principal retains decision-making capacity, unless:

- (1) the principal has otherwise specified in the health care directive;
- (2) a principal who retains decision-making capacity indicates otherwise; or
- (3) a health care provider reasonably determines that the principal must be isolated from all visitors or that the presence of the health care agent would endanger the health or safety of the principal, other patients, or the facility in which the care is being provided.

Minn. Stat. § 145C.07

Nebraska

A hospital patient who is nineteen years of age or older or an emancipated minor may designate at any time, orally or in writing, up to five individuals not legally related by marriage or blood to the patient whom the patient wishes to be given the same visitation privileges as an immediate family member of such patient. An individual so designated shall have the same visitation privileges as an immediate family member of such patient. The patient may rescind the designation or designations at any time, orally or in writing. Any designation or rescission made under this section shall be noted on the patient's medical records at such hospital. For purposes of this section, medical records means the hospital's record of a patient's health history and treatment rendered.

Neb. Rev. Stat. § 71-20,120

Nevada

Every patient of a medical facility, facility for the dependent or home for individual residential care has the right to:

* * *

9. Receive, within reasonable restrictions as to time and place, visitors of his choosing, including, without limitation, friends and members of his family.

Nev. Rev. Stat. § 449.710

1. If, as a result of the incapacitation of the patient or his inability to communicate, a patient of a medical facility, facility for the dependent or home for individual residential care who is 18 years of age or older is unable to inform the staff of the facility or home of the persons whom the patient authorizes to visit the patient at the facility or home, the facility or home shall allow visitation rights to any person designated by the patient in a letter, form or other document authorizing visitation executed in accordance with subsection 2. The visitation rights required by this subsection must be:

- (a) Provided in accordance with the visitation policies of the facility or home; and
- (b) The same visitation rights that are provided to a member of the patient's family who is legally related to the patient.

2. A person 18 years of age or older wishing to designate a person for the purposes of establishing visitation rights in a medical facility, facility for the dependent or home for individual residential care may execute a letter, form or other document authorizing visitation in substantially the following form:

(Date).....

I,, (patient who is designating another person as having visitation rights of the patient) do hereby designate (person who is being designated as having visitation rights of the patient) as having the right to visit me in a medical facility, facility for the dependent or home for individual residential care. I hereby instruct all staff of a medical facility, facility for the dependent or home for individual residential care in which I am a patient to admit (person who is being designated as having visitation rights of the patient) to my room and afford him or her the same visitation rights as are provided to members of my family who are legally related to me during my time as a patient.

.....
(Signed)

Nev. Rev. Stat. § 449.715

New York

2. The commissioner shall require that every nursing home and facility providing health related service, as defined in subdivision two and paragraph (b) of subdivision four of section twenty-eight hundred one of this article, shall adopt and make public a statement of the rights and responsibilities of the patients who are receiving care in such facilities, and shall treat such patients in accordance with the provisions of such statement.

3. Said statement of rights and responsibilities shall include, but not be limited to the following:

* * *

- (o) Every patient shall have the right to authorize those family members and other adults who will be given priority to visit consistent with the patient's or resident's ability to receive visitors.

N.Y. Pub. Health Law § 2803-c

Rhode Island

- (a) All health care providers as licensed under the provisions of chapter 29 or 37 of title 5 and all health care facilities as defined in § 23-17-2(6) shall be required to note in their patients' permanent medical records the name of individual(s) not legally related by blood or marriage to the patient who the patient wishes to be considered as immediate family member(s), for the purpose of granting extended visitation rights to the individual(s), so the individual(s) may visit the patient while he or she is receiving inpatient health care services in a health care facility.
- (b) A patient choosing to designate individual(s) as immediate family members for the purpose of extending visitation rights may choose up to five (5) individuals and do so either verbally or in writing. This designation shall be made only by the patient and can be initiated and/or rescinded by the patient at any time, either prior to, during, or subsequent to an inpatient stay at the health care facility.
- (c) The full names of designated individual(s), along with their relationship to the patient, shall be recorded in the patient's permanent medical records, both at the inpatient health care facility and with the patient's primary care physician.
- (d) In the event the patient has not had the opportunity to have this designation recorded in his or her medical records, a signed statement in the patient's own handwriting attesting to the designation of the individual(s) as an immediate family member for the purpose of extending visitation rights during the provision of health care services in an inpatient health care facility, along with their relationship to the individual(s) shall meet all the requirements of this chapter. The patient's signature on a signed statement shall be witnessed by two (2) individuals, neither of whom can be the designated individual(s). In the event a signed statement is not available, those designated as agents on a durable power of attorney for health care form shall be allowed visitation privileges.
- (e) This chapter shall not be construed to prohibit legally recognized members of the patient's family from visiting the patient if they have not been so designated through the provisions of this chapter. No patient shall be required to designate individual(s) under the provisions of this chapter.

R.I. Gen. Laws § 23-17-19.3

West Virginia

- (a) A public or private hospital licensed pursuant to the provisions of section two of this article is required to permit patient visitation privileges for nonrelatives unless otherwise requested by the patient or legal designee. For purposes of this section, the term "legal designee" means and includes those persons eighteen years of age or older, appointed by the patient to make health care decisions for the patient pursuant to the provisions of section six, article thirty of this chapter.
- (b) It is the intent of the Legislature that this section facilitate a patient's visitation with nonrelative individuals, and may not, in any way, restrict or limit allowable uses and disclosures of protected health information pursuant to the Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d-2 and the accompanying regulations in 45 CFR 164.500.
- (c) No provision of this section may be construed to prevent a hospital from otherwise restricting visitation privileges in order to prevent harm to the patient or disruption to the facility.

W. Va. Code § 16-5B-15

Wisconsin

- (2) Patient-designated visitors.
 - (a) Any individual who is 18 years of age or older may identify to a health care provider at an inpatient health care facility at any time, either orally or in writing, those persons with whom the individual wishes to visit while the individual is a patient at the inpatient health care facility. Except as provided in par. (b), no inpatient health care facility may deny visitation during the inpatient health care facility's regular visiting hours to any person identified by the individual.
 - (b) Subject to s. 51.61 for a treatment facility, an inpatient health care facility may deny visitation with a patient to any person if any of the following applies:
 - 1. The inpatient health care facility or a health care provider determines that the patient may not receive any visitors.

2. The inpatient health care facility or a health care provider determines that the presence of the person would endanger the health or safety of the patient.
3. The inpatient health care facility determines that the presence of the person would interfere with the primary operations of the inpatient health care facility.
4. The patient has subsequently expressed in writing to a health care provider at the inpatient health care facility that the patient no longer wishes to visit with the person. Unless subd. 2. applies, an inpatient health care facility may not under this subdivision deny visitation to the person based on a claim by someone other than a health care provider that the patient has orally expressed that the patient no longer wishes to visit with that person.

Wis. Stat. Ann. § 146.95

III. Provisions for the Disposition of Remains by a Designee

California

(a) The right to control the disposition of the remains of a deceased person, the location and conditions of interment, and arrangements for funeral goods and services to be provided, unless other directions have been given by the decedent pursuant to Section 7100.1, vests in, and the duty of disposition and the liability for the reasonable cost of disposition of the remains devolves upon, the following in the order named:

- (1) An agent under a power of attorney for health care who has the right and duty of disposition under Division 4.7 (commencing with Section 4600) of the Probate Code . . .

Cal. Health & Safety Code § 7100

Subject to any limitations in the power of attorney for health care:

- (a) An agent designated in the power of attorney may make health care decisions for the principal to the same extent the principal could make health care decisions if the principal had the capacity to do so.
- (b) The agent may also make decisions that may be effective after the principal's death, including the following:
 - (1) Making a disposition under the Uniform Anatomical Gift Act (Chapter 3. 5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code).
 - (2) Authorizing an autopsy under Section 7113 of the Health and Safety Code.
 - (3) Directing the disposition of remains under Section 7100 of the Health and Safety Code.

Cal. Prob. Code § 4683

The statutory advance health care directive form is as follows:

ADVANCE HEALTH CARE DIRECTIVE

(California Probate Code Section 4701)

Explanation

. . . If you choose not to limit the authority of your agent,
your agent will have the right to:

(e) Make anatomical gifts, authorize an autopsy, and direct
disposition of remains.

PART 1

POWER OF ATTORNEY FOR HEALTH CARE

(1.5) AGENT'S POSTDEATH AUTHORITY: My agent is authorized to make
anatomical gifts, authorize an autopsy, and direct disposition of
my remains, except as I state here or in Part 3 of this form:

(Add additional sheets if needed.)

Cal. Prob. Code § 4701

Georgia

GEORGIA ADVANCE DIRECTIVE FOR HEALTH CARE

* * *

PART ONE: HEALTH CARE AGENT

* * *

(5) POWERS OF HEALTH CARE AGENT AFTER DEATH

(A) AUTOPSY

My health care agent will have the power to authorize an autopsy of my body unless I have limited my health care agent's power by initialing below.

_____ (Initials) My health care agent will not have the power to authorize an autopsy of my body (unless an autopsy is required by law).

(B) ORGAN DONATION AND DONATION OF BODY

My health care agent will have the power to make a disposition of any part or all of my body for medical purposes pursuant to the Georgia Anatomical Gift Act, unless I have limited my health care agent's power by initialing below.

[Initial each statement that you want to apply.]

_____ (Initials) My health care agent will not have the power to make a disposition of my body for use in a medical study program.

_____ (Initials) My health care agent will not have the power to donate any of my organs.

(C) FINAL DISPOSITION OF BODY

My health care agent will have the power to make decisions about the final disposition of my body unless I have initialed below.

_____ (Initials) I want the following person to make decisions about the final disposition of my body:

Name: _____
Address: _____
Telephone Numbers: _____
(Home, Work, and Mobile)

I wish for my body to be:

_____ (Initials) Buried

OR

_____ (Initials) Cremated

Ga. Code Ann. § 31-32-4

- (e) The form of advance directive for health care contained in Code Section 31-32-4 shall, and any different form of advance directive for health care may, include the following powers, subject to any limitations appearing on the face of the form:

* * *

- (5) Unless otherwise provided, the health care agent is authorized to direct that an autopsy of the declarant's body be made; to make an anatomical gift of any part or all of the declarant's body pursuant to Article 6 of Chapter 5 of Title 44, the "Georgia Anatomical Gift Act"; and to direct the final disposition of the declarant's body, including funeral arrangements, burial, or cremation.

Ga. Code Ann. § 31-32-7

Illinois

... A health care agency may extend beyond the principal's death if necessary to permit anatomical gift, autopsy or disposition of remains. ...

755 Ill. Comp. Stat. 45/4-3

- (a) The following form (sometimes also referred to in this Act as the "statutory health care power") may be used to grant an agent powers with respect to the principal's own health care . . . :

ILLINOIS STATUTORY SHORT FORM POWER OF ATTORNEY FOR HEALTH CARE

* * *

POWER OF ATTORNEY made this day of
.....
(month) (year)

1. I,
.....,
(insert name and address of principal)

hereby appoint:
.....
(insert name and address of agent)

as my attorney-in-fact (my "agent") to act for me and in my name (in any way I could act in person) to make any and all decisions for me concerning my personal care, medical treatment, hospitalization and health care and to require, withhold or withdraw any type of medical treatment or procedure, even though my death may ensue. . . . My agent shall also have full power to authorize an autopsy and direct the disposition of my remains. Effective upon my death, my agent has the full power to make an anatomical gift of the following (initial one):

... Any organs, tissues, or eyes suitable for transplantation or used for research or education.

... Specific organs:
.....

(THE ABOVE GRANT OF POWER IS INTENDED TO BE AS BROAD AS POSSIBLE SO THAT YOUR AGENT WILL HAVE AUTHORITY TO MAKE ANY DECISION YOU COULD MAKE TO OBTAIN OR TERMINATE ANY TYPE OF

HEALTH CARE, INCLUDING WITHDRAWAL OF FOOD AND WATER AND OTHER LIFE-SUSTAINING MEASURES, IF YOUR AGENT BELIEVES SUCH ACTION WOULD BE CONSISTENT WITH YOUR INTENT AND DESIRES. IF YOU WISH TO LIMIT THE SCOPE OF YOUR AGENT'S POWERS OR PRESCRIBE SPECIAL RULES OR LIMIT THE POWER TO MAKE AN ANATOMICAL GIFT, AUTHORIZE AUTOPSY OR DISPOSE OF REMAINS, YOU MAY DO SO IN THE FOLLOWING PARAGRAPHS.)

* * *

- (b) . . . Without limiting the generality of the foregoing, the statutory health care power shall include the following powers, subject to any limitations appearing on the face of the form:

* * *

- (5) The agent is authorized: to direct that an autopsy be made pursuant to Section 2 of "An Act in relation to autopsy of dead bodies", approved August 13, 1965, [FN1] including all amendments; to make a disposition of any part or all of the principal's body pursuant to the Illinois Anatomical Gift Act, as now or hereafter amended; [FN2] and to direct the disposition of the principal's remains.

[FN1] 410 ILCS 505/2.

[FN2] 755 ILCS 50/1-1 et seq.

755 Ill. Comp. Stat. 45/4-10

Indiana

- (a) Except as provided in subsection (b), the following persons, in the order of priority indicated, have the authority to designate the manner, type, and selection of the final disposition and interment of human remains:
- (1) An individual who possesses a health care power of attorney of the decedent, unless the power of attorney prohibits the individual from making plans for the disposition of the decedent's body.

Ind. Code § 25-15-9-18

Kansas

- (a) A durable power of attorney for health care decisions may convey to the agent the authority to:
 - (1) Consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy, and disposition of the body

Kan. Stat. Ann. § 58-629

A durable power of attorney for health care decisions shall be in substantially the following form:

DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS GENERAL
STATEMENT OF AUTHORITY GRANTED

I,

_____ ,

designate and appoint:

Name

Address:

Telephone Number:

to be my agent for health care decisions and pursuant to the language stated below, on my behalf to:

- (1) Consent, refuse consent, or withdraw consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition, and to make decisions about organ donation, autopsy and disposition of the body . . .

Kan. Stat. Ann. § 58-632

Maryland

Maryland Advance Directive: Planning for Future Health Care
Decisions

AFTER MY DEATH

(This form is optional. Fill out only what reflects your wishes.)

PART III: DISPOSITION OF BODY AND FUNERAL ARRANGEMENTS

I want the following person to make decisions about the
disposition of my body and my funeral arrangements:

(Either initial the first or fill in the second.)

The health care agent who I named in my advance directive.

((or))

This person:

Name: _____

Address: _____

Telephone numbers: _____

(home and cell)

If I have written my wishes below, they should be followed. If
not, the person I have named should decide based on conversations
we have had, my religious or other beliefs and values, my
personality, and how I reacted to other peoples' funeral
arrangements. My wishes about the disposition of my body and my
funeral arrangements are:

Minnesota

Subd. 2. Determination of right to control and duty of disposition. The right to control the disposition of the remains of a deceased person, including the location and conditions of final disposition, unless other directions have been given by the decedent pursuant to subdivision 1, vests in, and the duty of final disposition of the body devolves upon, the following in the order named:

- (1) the person appointed in a dated written instrument signed by the decedent. Written instrument includes, but is not limited to, a health care directive executed under chapter 145C. Written instrument does not include a durable or nondurable power of attorney which terminates on the death of the principal pursuant to sections 523.08 and 523.09 . . .

Minn. Stat. § 149A.80

Nebraska

Except as otherwise provided in section 71-20,121, the right to control the disposition of the remains of a deceased person, except in the case of a minor subject to section 23-1824 and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests in the following persons in the order named:

- (1) Any person authorized to direct the disposition of the decedent's body pursuant to a notarized affidavit authorizing such disposition and signed and sworn to by the decedent. Such an affidavit shall be sufficient legal authority for authorizing disposition without additional authorization from the decedent, the decedent's family, or the decedent's estate. Such person shall not be considered an attorney in fact pursuant to sections 30-3401 to 30-3432;

* * *

A funeral director, funeral establishment, crematory authority, or crematory operator shall not be subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the person or persons described in this section if the funeral director or crematory authority or operator reasonably believes such person is entitled to control the final disposition of the remains of the deceased person. The liability for the reasonable cost of the final disposition of the remains of the deceased person devolves jointly and severally upon all kin of the decedent in the same degree of kindred and upon the estate of the decedent and, in cases when the county

board has the right to control disposition of the remains under subdivision (8) of this section, upon the county in which death occurred from funds available for such purpose.

Neb. Rev. Stat. § 71-1339

North Carolina

(b) A health care power of attorney may authorize the health care agent to exercise any and all rights the principal may have with respect to anatomical gifts, the authorization of any autopsy, and the disposition of remains.

N.C. Gen. Stat. Ann. § 32A-19

The use of the following form in the creation of a health care power of attorney is lawful and, when used, it shall meet the requirements of and be construed in accordance with the provisions of this Article:

* * *

3. General statement of authority granted.

Except as indicated in section 4 below, I hereby grant to my health care agent named above full power and authority to make health care decisions, including mental health treatment decisions, on my behalf, including, but not limited to, the following:

* * *

H. To exercise any right I may have to make a disposition of any part or all of my body for medical purposes; to authorize an autopsy; to make an anatomical gift of my organs or body, or part thereof, and to direct the disposition of my remains.

N.C. Gen. Stat. Ann. § 32A-25

Vermont

(a) An adult may do any or all of the following in an advance directive:

* * *

- (18) except as provided in subsection (d) of this section, appoint an individual to make or refuse to make an anatomical gift, and to arrange for the disposition of the principal's remains, including funeral goods and services.

Vt. Stat. Ann. tit. 18, § 9702

IV. Provisions Creating Potential for Insurance of Designees

Virginia

- A. Coverage under a group accident and sickness insurance policy, except a policy issued pursuant to subsection B of § 38.2-3521.1, may be extended to insure:
1. The spouse and any child who is under the age of 19 years or who is a dependent and a full-time student under 25 years of age, without regard to whether such child resides in the same household as the insured group member, or any class of spouse and dependent children, of each insured group member who so elects; and
 2. Any other class of persons as may mutually be agreed upon by the insurer and the group policyholder.

Va. Code Ann. § 38.2-3525