

Presented to the governor April 10, 1998

Signed by the governor April 21, 1998, 9:32 a.m.

CHAPTER 399—S.F.No. 2050

An act relating to health; modifying provisions governing advance health care directives; combining laws governing living wills and durable power of attorney for health care; amending Minnesota Statutes 1996, sections 144.335, subdivision 1; 145C.01, subdivisions 2, 3, 4, 8, and by adding subdivisions; 145C.02; 145C.03; 145C.04; 145C.05, subdivisions 1 and 2; 145C.06; 145C.07; 145C.08; 145C.09; 145C.10; 145C.11; 145C.12; 145C.13, subdivision 1; 145C.15; 525.55, subdivisions 1 and 2; 525.551, subdivisions 1 and 5; 525.9212; and 609.215, subdivision 3; Minnesota Statutes 1997 Supplement, sections 149A.80, subdivision 2; 253B.04, subdivision 1a; 253B.07, subdivision 1; and 253B.092, subdivisions 2 and 6; proposing coding for new law in Minnesota Statutes, chapters 145B; and 145C.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 144.335, subdivision 1, is amended to read:

Subdivision 1. **DEFINITIONS.** For the purposes of this section, the following terms have the meanings given them:

(a) "Patient" means a natural person who has received health care services from a provider for treatment or examination of a medical, psychiatric, or mental condition, the surviving spouse and parents of a deceased patient, or a person the patient designates appoints in writing as a representative, including a health care agent acting pursuant to chapter 145C, unless the authority of the agent has been limited by the principal in the principal's health care directive. Except for minors who have received health care services pursuant to sections 144.341 to 144.347, in the case of a minor, patient includes a parent or guardian, or a person acting as a parent or guardian in the absence of a parent or guardian.

(b) "Provider" means (1) any person who furnishes health care services and is licensed to furnish the services pursuant to chapter 147, 148, 148B, 150A, 151, or 153; (2) a home care provider licensed under section 144A.46; (3) a health care facility licensed pursuant to this chapter or chapter 144A; (4) a physician assistant registered under chapter 147A; and (5) an unlicensed mental health practitioner regulated pursuant to sections 148B.60 to 148B.71.

(c) "Individually identifiable form" means a form in which the patient is or can be identified as the subject of the health records.

Sec. 2. [145B.011] APPLICATION OF CHAPTER.

This chapter applies only to living wills executed before August 1, 1998. If a document purporting to be a living will is executed on or after August 1, 1998, its legal sufficiency, interpretation, and enforcement must be determined under the provisions of chapter 145C in effect on the date of its execution.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 3. Minnesota Statutes 1996, section 145C.01, is amended by adding a subdivision to read:

Subd. 1a. **ACT IN GOOD FAITH.** “Act in good faith” means to act consistently with a legally sufficient health care directive of the principal, a living will executed under chapter 145B, a declaration regarding intrusive mental health treatment executed under section 253B.03, subdivision 6d, or information otherwise made known by the principal, unless the actor has actual knowledge of the modification or revocation of the information expressed. If these sources of information do not provide adequate guidance to the actor, “act in good faith” means acting in the best interests of the principal, considering the principal’s overall general health condition and prognosis and the principal’s personal values to the extent known. Notwithstanding any instruction of the principal, a health care agent, health care provider, or any other person is not acting in good faith if the person violates the provisions of section 609.215 prohibiting assisted suicide.

Sec. 4. Minnesota Statutes 1996, section 145C.01, is amended by adding a subdivision to read:

Subd. 1b. **DECISION-MAKING CAPACITY.** “Decision-making capacity” means the ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision.

Sec. 5. Minnesota Statutes 1996, section 145C.01, subdivision 2, is amended to read:

Subd. 2. **HEALTH CARE AGENT.** “Health care agent” means an individual age 18 or older who is designated appointed by a principal in a durable health care power of attorney for health care to make health care decisions on behalf of a the principal and has consented to act in that capacity. An agent “Health care agent” may also be referred to as “attorney in fact agent.”

Sec. 6. Minnesota Statutes 1996, section 145C.01, subdivision 3, is amended to read:

Subd. 3. **DURABLE HEALTH CARE POWER OF ATTORNEY FOR HEALTH CARE.** “Durable Health care power of attorney for health care” means an instrument authorizing an agent appointing one or more health care agents to make health care decisions for the principal if the principal is unable, in the judgment of the attending physician, to make or communicate health care decisions.

Sec. 7. Minnesota Statutes 1996, section 145C.01, subdivision 4, is amended to read:

Subd. 4. **HEALTH CARE.** “Health care” means any care, treatment, service, or procedure to maintain, diagnose, or treat otherwise affect a person’s physical or mental condition. “Health care” includes the provision of nutrition or hydration parenterally or through intubation but does not include any treatment, service, or procedure that violates the provisions of section 609.215 prohibiting assisted suicide. “Health care” does not include intrusive mental health treatment as defined in section 253B.03, subdivision 6b, unless the durable power of attorney for health care specifically applies to decisions relating to intrusive mental health treatment also includes the establishment of a person’s abode within or without the state and personal security safeguards for a person, to the extent decisions on these matters relate to the health care needs of the person.

New language is indicated by underline, deletions by strikeout.

Sec. 8. Minnesota Statutes 1996, section 145C.01, is amended by adding a subdivision to read:

Subd. 5a. HEALTH CARE DIRECTIVE. "Health care directive" means a written instrument that complies with section 145C.03 and includes one or more health care instructions, a health care power of attorney, or both; or a durable power of attorney for health care executed under this chapter before August 1, 1998.

Sec. 9. Minnesota Statutes 1996, section 145C.01, is amended by adding a subdivision to read:

Subd. 7a. HEALTH CARE INSTRUCTION. "Health care instruction" means a written statement of the principal's values, preferences, guidelines, or directions regarding health care.

Sec. 10. Minnesota Statutes 1996, section 145C.01, subdivision 8, is amended to read:

Subd. 8. PRINCIPAL. "Principal" means an individual age 18 or older who has executed a durable power of attorney for health care directive.

Sec. 11. Minnesota Statutes 1996, section 145C.01, is amended by adding a subdivision to read:

Subd. 9. REASONABLY AVAILABLE. "Reasonably available" means able to be contacted and willing and able to act in a timely manner considering the urgency of the principal's health care needs.

Sec. 12. Minnesota Statutes 1996, section 145C.02, is amended to read:

145C.02 DURABLE POWER OF ATTORNEY FOR HEALTH CARE DIRECTIVE.

A durable power of attorney for health care under this chapter authorizes the agent to make health care decisions for the principal when the principal is unable, in the judgment of the principal's attending physician, to make or communicate health care decisions. The durable power of attorney for health care must substantially comply with the requirements of this chapter. An instrument executed prior to August 1, 1993, purporting to create a durable power of attorney for health care is valid if the document specifically authorizes the agent to make health care decisions and is executed in compliance with section 145C.03. A principal with the capacity to do so may execute a health care directive. A health care directive may include one or more health care instructions to direct health care providers, others assisting with health care, family members, and a health care agent. A health care directive may include a health care power of attorney to appoint a health care agent to make health care decisions for the principal when the principal, in the judgment of the principal's attending physician, lacks decision-making capacity, unless otherwise specified in the health care directive.

Sec. 13. Minnesota Statutes 1996, section 145C.03, is amended to read:

145C.03 REQUIREMENTS.

Subdivision 1. EXECUTION LEGAL SUFFICIENCY. A durable power of attorney for health care must be signed by the principal or in the principal's name by some

New language is indicated by underline, deletions by ~~strikeout~~.

other individual acting in the principal's presence and by the principal's direction. A durable power of attorney for health care must contain the date of its execution and must be witnessed or acknowledged by one of the following methods:

(1) signed by at least two individuals age 18 or older each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature; or

(2) acknowledged by the principal before a notary public who is not the agent. To be legally sufficient in this state, a health care directive must:

(1) be in writing;

(2) be dated;

(3) state the principal's name;

(4) be executed by a principal with capacity to do so with the signature of the principal or with the signature of another person authorized by the principal to sign on behalf of the principal;

(5) contain verification of the principal's signature or the signature of the person authorized by the principal to sign on behalf of the principal, either by a notary public or by witnesses as provided under this chapter; and

(6) include a health care instruction, a health care power of attorney, or both.

Subd. 2. INDIVIDUALS INELIGIBLE TO ACT AS HEALTH CARE AGENT.

(a) An individual appointed by the principal under section 145C.05, subdivision 2, paragraph (b), to make the determination of the principal's decision-making capacity is not eligible to act as the health care agent.

(b) The following individuals are not eligible to act as the health care agent in a durable power of attorney for health care, unless the individual designated appointed is related to the principal by blood, marriage, registered domestic partnership, or adoption, or unless the principal has otherwise specified in the health care directive:

(1) a health care provider attending the principal on the date of execution of the health care directive or on the date the health care agent must make decisions for the principal; or

(2) an employee of a health care provider attending the principal on the date of execution of the health care directive or on the date the health care agent must make decisions for the principal.

Subd. 3. INDIVIDUALS INELIGIBLE TO ACT AS WITNESSES OR NOTARY PUBLIC. The (a) A health care agent designated or alternate health care agent appointed in the durable power of attorney for a health care power of attorney may not act as a witness or notary public for the execution of the durable power of attorney for health care directive that includes the health care power of attorney.

(b) At least one witness to the execution of the durable power of attorney for health care directive must not be a health care provider providing direct care to the principal or an employee of a health care provider providing direct care to the principal on the date of execution. A person notarizing a health care directive may be an employee of a health care provider providing direct care to the principal.

New language is indicated by underline, deletions by strikeout.

Sec. 14. Minnesota Statutes 1996, section 145C.04, is amended to read:

145C.04 EXECUTED IN ANOTHER STATE.

(a) A durable power of attorney for health care or similar document executed in another state or jurisdiction in compliance with the law of that state or jurisdiction is valid and enforceable in this state, to the extent the document is consistent with the laws of this state health care directive or similar document executed in another state or jurisdiction is legally sufficient under this chapter if it:

- (1) complies with the law of the state or jurisdiction in which it was executed; or
- (2) complies with section 145C.03.

(b) Nothing in this section shall be interpreted to authorize a directive or similar document to override the provisions of section 609.215 prohibiting assisted suicide.

Sec. 15. Minnesota Statutes 1996, section 145C.05, subdivision 1, is amended to read:

Subdivision 1. **CONTENT.** A durable power of attorney for health care directive executed pursuant to this chapter may, but need not, be in the following form:

"I appoint as my agent (my attorney in fact) to make any health care decision for me when, in the judgment of my attending physician, I am unable to make or communicate the decision myself and my agent consents to make or communicate the decision on my behalf.

My agent has the power to make any health care decision for me. This power includes the power to give consent, to refuse consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose, or treat my physical or mental condition, including giving me food or water by artificial means. My agent has the power, where consistent with the laws of this state, to make a health care decision to withhold or stop health care necessary to keep me alive. It is my intention that my agent or any alternative agent has a personal obligation to me to make health care decisions for me consistent with my expressed wishes. I understand, however, that my agent or any alternative agent has no legal duty to act.

My agent and any alternative agents have consented to act as my agent. My agent and any alternative agents have been notified that they will be nominated as a guardian or conservator for me.

My agent must act consistently with my desires as stated in this document or as otherwise made known by me to my agent.

My agent has the same right as I would have to receive, review, and obtain copies of my medical records and to consent to disclosure of those records." contained in section 145C.16.

Sec. 16. Minnesota Statutes 1996, section 145C.05, subdivision 2, is amended to read:

Subd. 2. **ADDITIONAL PROVISIONS THAT MAY BE INCLUDED.** The durable power of attorney for (a) A health care directive may include additional provisions consistent with this chapter, including, but not limited to:

New language is indicated by underline, deletions by ~~strikeout~~.

(1) the designation of one or more alternative alternate health care agents to act if the named health care agent is unable, unavailable, or unwilling not reasonably available to serve;

(2) specific instructions to the agent or any alternative agents directions to joint health care agents regarding the process or standards by which the health care agents are to reach a health care decision for the principal, and a statement whether joint health care agents may act independently of one another;

(3) limitations, if any, on the right of the health care agent or any alternative alternate health care agents to receive, review, obtain copies of, and consent to the disclosure of the principal's medical records;

(4) limitations, if any, on the nomination of the health care agent as guardian or conservator of the person for purposes of section 525.544; and

(5) a document of gift for the purpose of making an anatomical gift, as set forth in sections 525.921 to 525.9224, or an amendment to, revocation of, or refusal to make an anatomical gift;

(6) a declaration regarding intrusive mental health treatment under section 253B.03, subdivision 6d, or a statement that the health care agent is authorized to give consent for the principal under section 253B.04, subdivision 1a;

(7) a funeral directive as provided in section 149A.80, subdivision 2;

(8) limitations, if any, to the effect of dissolution or annulment of marriage or termination of domestic partnership on the appointment of a health care agent under section 145C.09, subdivision 2;

(9) specific reasons why a principal wants a health care provider or an employee of a health care provider attending the principal to be eligible to act as the principal's health care agent;

(10) health care instructions by a woman of child bearing age regarding how she would like her pregnancy, if any, to affect health care decisions made on her behalf; and

(11) health care instructions regarding artificially administered nutrition or hydration.

(b) A health care directive may include a statement of the circumstances under which the directive becomes effective other than upon the judgment of the principal's attending physician in the following situations:

(1) a principal who in good faith generally selects and depends upon spiritual means or prayer for the treatment or care of disease or remedial care and does not have an attending physician, may include a statement appointing an individual who may determine the principal's decision-making capacity; and

(2) a principal who in good faith does not generally select a physician or a health care facility for the principal's health care needs may include a statement appointing an individual who may determine the principal's decision-making capacity, provided that if the need to determine the principal's capacity arises when the principal is receiving care under the direction of an attending physician in a health care facility, the determination must be made by an attending physician after consultation with the appointed individual.

New language is indicated by underline, deletions by strikeout.

If a person appointed under clause (1) or (2) is not reasonably available and the principal is receiving care under the direction of an attending physician in a health care facility, an attending physician shall determine the principal's decision-making capacity.

(c) A health care directive may authorize a health care agent to make health care decisions for a principal even though the principal retains decision-making capacity.

Sec. 17. Minnesota Statutes 1996, section 145C.06, is amended to read:

145C.06 WHEN EFFECTIVE.

(a) Except as provided in paragraph (b), a durable power of attorney for a health care directive is effective for a health care decision when:

(1) it has been executed in accordance with meets the requirements of section 145C.03, subdivision 1; and

(2) the principal is unable, in the determination of the attending physician of the principal, to make or communicate that health care decision and the agent consents to make or communicate the decision lacks decision-making capacity to make the health care decision; or if other conditions for effectiveness otherwise specified by the principal have been met.

A health care directive is not effective for a health care decision when the principal, in the determination of the attending physician of the principal, recovers decision-making capacity; or if other conditions for effectiveness otherwise specified by the principal have been met.

(b) If the principal states in the durable power of attorney that the principal does not have an attending physician because the principal in good faith generally selects and depends upon spiritual means or prayer for the treatment or care of disease or remedial care, the principal may designate an individual in the durable power of attorney for health care who may certify in a writing acknowledged before a notary public that the principal is unable to make or communicate a health care decision. The requirements of section 145C.03, subdivisions 2 and 3, relating to the eligibility of a health care provider attending the principal or the provider's employee to act as an agent or witness apply to an individual designated under this paragraph.

Sec. 18. Minnesota Statutes 1996, section 145C.07, is amended to read:

145C.07 AUTHORITY AND DUTIES OF HEALTH CARE AGENT.

Subdivision 1. **AUTHORITY.** The health care agent has authority to make any particular health care decision only if the principal is unable lacks decision-making capacity, in the determination of the attending physician, to make or communicate that health care decision; or if other conditions for effectiveness otherwise specified by the principal have been met. The agent does not have authority to consent to a voluntary commitment under chapter 253B. The physician or other health care provider shall continue to obtain the principal's informed consent to all health care decisions for which the principal is capable of informed consent has decision-making capacity, unless other conditions for effectiveness otherwise specified by the principal have been met. An alternate health care agent has authority to act if the primary health care agent is not reasonably available to act.

New language is indicated by underline, deletions by strikeout.

Subd. 2. HEALTH CARE AGENT AS GUARDIAN. Except as otherwise provided in the durable power of attorney for health care Unless the principal has otherwise specified in the health care directive, the appointment of the health care agent in a durable power of attorney for health care directive is considered a nomination of a guardian or conservator of the person for purposes of section 525.544.

Subd. 3. DUTIES. In exercising the authority under the durable power of attorney for a health care directive, ~~the~~ a health care agent has a duty to act in accordance with the desires of the principal as expressed in the durable power of attorney for health care, as expressed in a living will under chapter 145B or in a declaration regarding intrusive mental health treatment under section 253B.03, subdivision 6d, or as otherwise made known by the principal to the agent at any time. If the principal's desires are not known or cannot be determined from information known to the agent, the agent has a duty to act in the best interests of the principal taking into account the principal's overall medical condition and prognosis good faith. An A health care agent or any alternative alternate health care agent has a personal obligation to the principal to make health care decisions authorized by the durable health care power of attorney for health care, but this obligation does not constitute a legal duty to act.

Subd. 4. INCONSISTENCIES AMONG DOCUMENTS. In the event of inconsistency between the ~~designation~~ appointment of a proxy under chapter 145B or section 253B.03, subdivision 6d, or of an health care agent under this chapter, the most recent designation appointment takes precedence. In the event of other inconsistencies among documents executed under this chapter, under chapter 145B, or under section 253B.03, subdivision 6d, or 525.544, or other legally sufficient documents, the provisions of the most recently executed document take precedence only to the extent of the inconsistency.

Sec. 19. Minnesota Statutes 1996, section 145C.08, is amended to read:

145C.08 AUTHORITY TO REVIEW MEDICAL RECORDS.

An A health care agent acting pursuant to a durable power of attorney for health care directive has the same right as the principal to receive, review, and obtain copies of medical records of the principal, and to consent to the disclosure of medical records of the principal, unless the durable power of attorney for health care expressly provides otherwise principal has otherwise specified in the health care directive.

Sec. 20. Minnesota Statutes 1996, section 145C.09, is amended to read:

145C.09 REVOCATION OF DURABLE POWER OF ATTORNEY HEALTH CARE DIRECTIVE.

Subdivision 1. REVOCATION. The A principal with the capacity to do so may revoke a durable power of attorney for health care directive in whole or in part at any time by doing any of the following:

(1) canceling, defacing, obliterating, burning, tearing, or otherwise destroying the durable power of attorney for health care directive instrument or directing another in the presence of the principal to destroy the durable power of attorney for health care directive instrument, with the intent to revoke the health care directive in whole or in part;

(2) executing a statement, in writing and dated, expressing the principal's intent to revoke the durable power of attorney for health care directive in whole or in part;

New language is indicated by underline, deletions by ~~strikeout~~.

(3) verbally expressing the principal's intent to revoke the durable power of attorney for health care directive in whole or in part in the presence of two witnesses who do not have to be present at the same time; or

(4) executing a subsequent durable power of attorney for health care instrument directive, to the extent the subsequent instrument is inconsistent with any prior instrument.

Subd. 2. EFFECT OF DISSOLUTION OR ANNULMENT OF MARRIAGE OR TERMINATION OF DOMESTIC PARTNERSHIP ON APPOINTMENT OF HEALTH CARE AGENT. Unless the durable power of attorney for health care expressly provides otherwise principal has otherwise specified in the health care directive, the appointment by the principal of the principal's spouse or registered domestic partner as health care agent under a durable health care power of attorney for health care is revoked by the commencement of proceedings for dissolution, annulment, or termination of the principal's marriage or commencement of proceedings for termination of the principal's registered domestic partnership.

Sec. 21. Minnesota Statutes 1996, section 145C.10, is amended to read:

145C.10 PRESUMPTIONS.

(a) The principal is presumed to have the capacity to appoint an agent to make execute a health care decisions directive and to revoke a durable power of attorney for health care directive, absent clear and convincing evidence to the contrary.

(b) A health care provider or health care agent may presume that a durable power of attorney for health care directive is valid legally sufficient absent actual knowledge to the contrary. A health care directive is presumed to be properly executed, absent clear and convincing evidence to the contrary.

It is presumed that an (c) A health care agent, and a health care provider acting pursuant to the direction of an a health care agent, are presumed to be acting in good faith and in the best interests of the principal, absent clear and convincing evidence to the contrary.

(d) A health care directive is presumed to remain in effect until the principal modifies or revokes it, absent clear and convincing evidence to the contrary.

(e) This chapter does not create a presumption concerning the intention of an individual who has not executed a durable power of attorney for health care directive and, except as otherwise provided by section 145C.15, does not impair or supersede any right or responsibility of an individual to consent, refuse to consent, or withdraw consent to health care on behalf of another in the absence of a durable power of attorney for health care directive.

(f) A copy of a health care directive is presumed to be a true and accurate copy of the executed original, absent clear and convincing evidence to the contrary, and must be given the same effect as an original.

(g) When a patient lacks decision-making capacity and is pregnant, and in reasonable medical judgment there is a real possibility that if health care to sustain her life and the life of the fetus is provided the fetus could survive to the point of live birth, the health care provider shall presume that the patient would have wanted such health care to be provided, even if the withholding or withdrawal of such health care would be authorized

New language is indicated by underline, deletions by ~~strikeout~~.

were she not pregnant. This presumption is negated by health care directive provisions described in section 145C.05, subdivision 2, paragraph (a), clause (10), that are to the contrary, or, in the absence of such provisions, by clear and convincing evidence that the patient's wishes, while competent, were to the contrary.

For purposes of this chapter, acting in good faith means acting consistently with the desires of the principal as expressed in the durable power of attorney for health care, as expressed in a living will under chapter 145B or in a declaration regarding intrusive mental health treatment under section 253B.03, subdivision 6d, or otherwise made known by the principal to the agent. If the principal's desires are not known or cannot be determined from information known to the agent, acting in good faith means acting in the best interests of the principal, taking into account the principal's overall medical condition and prognosis.

Sec. 22. Minnesota Statutes 1996, section 145C.11, is amended to read:

145C.11 IMMUNITIES.

Subdivision 1. **HEALTH CARE AGENT.** An A health care agent is not subject to criminal prosecution or civil liability for any health care decision made in good faith pursuant to a durable power of attorney for health care, unless the agent has actual knowledge of the revocation of the durable power of attorney for health care if the health care agent acts in good faith.

Subd. 2. **HEALTH CARE PROVIDER.** (a) With respect to health care provided to a patient with a health care directive, a health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action if the health care provider acts in good faith and in accordance with applicable standards of care.

(b) A health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action if the health care provider relies on a health care decision made by the health care agent and the following requirements are satisfied:

(1) the health care provider believes in good faith that the decision was made by an a health care agent authorized appointed to make the decision and has no actual knowledge that the durable power of attorney for health care directive has been revoked; and

(2) the health care provider believes in good faith that the decision is consistent with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known by the principal to the health care agent is acting in good faith.

(b) (c) A health care provider who administers health care necessary to keep the principal alive, despite a health care decision of the health care agent to withhold or withdraw that treatment, is not subject to criminal prosecution, civil liability, or professional disciplinary action if that health care provider promptly took all reasonable steps to:

(1) notify the health care agent of the health care provider's unwillingness to comply;

(2) document the notification in the principal's medical record; and

(3) permit the health care agent to arrange to transfer care of the principal to another health care provider willing to comply with the decision of the health care agent.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 23. Minnesota Statutes 1996, section 145C.12, is amended to read:

145C.12 PROHIBITED PRACTICES.

Subdivision 1. **HEALTH CARE PROVIDER.** A health care provider, health care service plan, insurer, self-insured employee welfare benefit plan, or nonprofit hospital plan may not condition admission to a facility, or the providing of treatment or insurance, on the requirement that an individual execute a durable power of attorney for health care directive.

Subd. 2. **INSURANCE.** A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawing of health care pursuant to the direction of an a health care agent appointed pursuant to this chapter, or pursuant to the implementation of health care instructions under this chapter.

Sec. 24. [145C.16] SUGGESTED FORM.

The following is a suggested form of a health care directive and is not a required form.

HEALTH CARE DIRECTIVE

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

PART I: Name another person (called the health care agent) to make health care decisions for me if I am unable to decide or speak for myself. My health care agent must make health care decisions for me based on the instructions I provide in this document (Part II), if any, the wishes I have made known to him or her, or must act in my best interest if I have not made my health care wishes known.

AND/OR

PART II: Give health care instructions to guide others making health care decisions for me. If I have named a health care agent, these instructions are to be used by the agent. These instructions may also be used by my health care providers, others assisting with my health care and my family, in the event I cannot make decisions for myself.

PART I: APPOINTMENT OF HEALTH CARE AGENT

THIS IS WHO I WANT TO MAKE HEALTH CARE DECISIONS FOR ME IF I AM UNABLE TO DECIDE OR SPEAK FOR MYSELF

(I know I can change my agent or alternate agent at any time and I know I do not have to appoint an agent or an alternate agent)

NOTE: If you appoint an agent, you should discuss this health care directive with your agent and give your agent a copy. If you do not wish to appoint an agent, you may leave Part I blank and go to Part II.

When I am unable to decide or speak for myself, I trust and appoint to make health care decisions for me. This person is called my health care agent.

Relationship of my health care agent to me:

New language is indicated by underline, deletions by ~~strikeout~~.

Telephone number of my health care agent:

.....

Address of my health care agent:

.....

(OPTIONAL) APPOINTMENT OF ALTERNATE HEALTH CARE AGENT: If my health care agent is not reasonably available, I trust and appoint to be my health care agent instead.

Relationship of my alternate health care agent to me:

.....

Telephone number of my alternate health care agent:

.....

Address of my alternate health care agent:

.....

THIS IS WHAT I WANT MY HEALTH CARE AGENT TO BE ABLE TO DO IF I AM UNABLE TO DECIDE OR SPEAK FOR MYSELF

(I know I can change these choices)

My health care agent is automatically given the powers listed below in (A) through (D). My health care agent must follow my health care instructions in this document or any other instructions I have given to my agent. If I have not given health care instructions, then my agent must act in my best interest.

Whenever I am unable to decide or speak for myself, my health care agent has the power to:

(A) Make any health care decision for me. This includes the power to give, refuse, or withdraw consent to any care, treatment, service, or procedures. This includes deciding whether to stop or not start health care that is keeping me or might keep me alive, and deciding about intrusive mental health treatment.

(B) Choose my health care providers.

(C) Choose where I live and receive care and support when those choices relate to my health care needs.

(D) Review my medical records and have the same rights that I would have to give my medical records to other people.

If I DO NOT want my health care agent to have a power listed above in (A) through (D) OR if I want to LIMIT any power in (A) through (D), I MUST say that here:

.....

.....

My health care agent is NOT automatically given the powers listed below in (1) and (2). If I WANT my agent to have any of the powers in (1) and (2), I must INITIAL the line in front of the power; then my agent WILL HAVE that power.

New language is indicated by underline, deletions by strikeout.

- ... (1) To decide whether to donate my organs when I die.
- ... (2) To decide what will happen with my body when I die (burial, cremation).

If I want to say anything more about my health care agent's powers or limits on the powers, I can say it here:

.....

PART II: HEALTH CARE INSTRUCTIONS

NOTE: Complete this Part II if you wish to give health care instructions. If you appointed an agent in Part I, completing this Part II is optional but would be very helpful to your agent. However, if you chose not to appoint an agent in Part I, you MUST complete some or all of this Part II if you wish to make a valid health care directive.

These are instructions for my health care when I am unable to decide or speak for myself. These instructions must be followed (so long as they address my needs).

THESE ARE MY BELIEFS AND VALUES ABOUT MY HEALTH CARE

(I know I can change these choices or leave any of them blank)

I want you to know these things about me to help you make decisions about my health care:

My goals for my health care:

.....

My fears about my health care:

.....

My spiritual or religious beliefs and traditions:

.....

My beliefs about when life would be no longer worth living:

.....

My thoughts about how my medical condition might affect my family:

.....

THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH CARE

(I know I can change these choices or leave any of them blank)

New language is indicated by underline, deletions by ~~strikeout~~.

Many medical treatments may be used to try to improve my medical condition or to prolong my life. Examples include artificial breathing by a machine connected to a tube in the lungs, artificial feeding or fluids through tubes, attempts to start a stopped heart, surgeries, dialysis, antibiotics, and blood transfusions. Most medical treatments can be tried for a while and then stopped if they do not help.

I have these views about my health care in these situations:

(Note: You can discuss general feelings, specific treatments, or leave any of them blank)

If I had a reasonable chance of recovery, and were temporarily unable to decide or speak for myself, I would want:
.....

If I were dying and unable to decide or speak for myself, I would want:
.....

If I were permanently unconscious and unable to decide or speak for myself, I would want:
.....

If I were completely dependent on others for my care and unable to decide or speak for myself, I would want:
.....

In all circumstances, my doctors will try to keep me comfortable and reduce my pain. This is how I feel about pain relief if it would affect my alertness or if it could shorten my life:
.....

There are other things that I want or do not want for my health care, if possible:

Who I would like to be my doctor:
.....

Where I would like to live to receive health care:
.....

Where I would like to die and other wishes I have about dying:
.....

My wishes about donating parts of my body when I die:
.....

My wishes about what happens to my body when I die (cremation, burial):
.....

Any other things:
.....

PART III: MAKING THE DOCUMENT LEGAL

This document must be signed by me. It also must either be verified by a notary public (Option 1) OR witnessed by two witnesses (Option 2). It must be dated when it is verified or witnessed.

New language is indicated by underline, deletions by ~~strikeout~~.

I am thinking clearly, I agree with everything that is written in this document, and I have made this document willingly.

.....
My Signature

Date signed:
Date of birth
Address:
.....

If I cannot sign my name, I can ask someone to sign this document for me.

.....

Signature of the person who I asked to sign this document for me.

.....

Printed name of the person who I asked to sign this document for me.

Option 1: Notary Public

In my presence on (date), (name) acknowledged his/her signature on this document or acknowledged that he/she authorized the person signing this document to sign on his/her behalf. I am not named as a health care agent or alternate health care agent in this document.

.....
(Signature of Notary)

(Notary Stamp)

Option 2: Two Witnesses

Two witnesses must sign. Only one of the two witnesses can be a health care provider or an employee of a health care provider giving direct care to me on the day I sign this document.

Witness One:

(i) In my presence on (date), (name) acknowledged his/her signature on this document or acknowledged that he/she authorized the person signing this document to sign on his/her behalf.

(ii) I am at least 18 years of age.

(iii) I am not named as a health care agent or an alternate health care agent in this document.

(iv) If I am a health care provider or an employee of a health care provider giving direct care to the person listed above in (A), I must initial this box:

New language is indicated by underline, deletions by ~~strikeout~~.

I certify that the information in (i) through (iv) is true and correct.

.....
(Signature of Witness One)

Address:
.....

Witness Two:

(i) In my presence on (date), (name) acknowledged his/her signature on this document or acknowledged that he/she authorized the person signing this document to sign on his/her behalf.

(ii) I am at least 18 years of age.

(iii) I am not named as a health care agent or an alternate health care agent in this document.

(iv) If I am a health care provider or an employee of a health care provider giving direct care to the person listed above in (A), I must initial this box:

I certify that the information in (i) through (iv) is true and correct.

.....
(Signature of Witness Two)

Address:
.....

REMINDER: Keep this document with your personal papers in a safe place (not in a safe deposit box). Give signed copies to your doctors, family, close friends, health care agent, and alternate health care agent. Make sure your doctor is willing to follow your wishes. This document should be part of your medical record at your physician's office and at the hospital, home care agency, hospice, or nursing facility where you receive your care.

Sec. 25. Minnesota Statutes 1996, section 145C.13, subdivision 1, is amended to read:

Subdivision 1. **GROSS MISDEMEANOR OFFENSES.** Whoever commits any of the following acts is guilty of a gross misdemeanor:

(1) willfully conceals, cancels, defaces, or obliterates a durable power of attorney for health care directive of a principal without the consent of the principal;

(2) willfully conceals or withholds personal knowledge of a revocation of a durable power of attorney for health care directive;

(3) falsifies or forges a durable power of attorney for health care directive or a revocation of the instrument;

(4) coerces or fraudulently induces another to execute a durable power of attorney for health care directive; or

(5) requires or prohibits the execution of a durable power of attorney for health care directive as a condition for being insured for or receiving all or some health care services.

New language is indicated by underline, deletions by strikeout.

Sec. 26. Minnesota Statutes 1996, section 145C.15, is amended to read:

145C.15 DUTIES OF HEALTH CARE PROVIDERS TO PROVIDE LIFE-SUSTAINING HEALTH CARE.

(a) If a proxy acting under chapter 145B or ~~an~~ a health care agent acting under this chapter directs the provision of health care, nutrition, or hydration that, in reasonable medical judgment, has a significant possibility of sustaining the life of the principal or declarant, a health care provider shall take all reasonable steps to ensure the provision of the directed health care, nutrition, or hydration if the provider has the legal and actual capability of providing the health care either itself or by transferring the principal or declarant to a health care provider who has that capability. Any transfer of a principal or declarant under this paragraph must be done promptly and, if necessary to preserve the life of the principal or declarant, by emergency means. This paragraph does not apply if a living will under chapter 145B or a durable power of attorney for health care directive indicates an intention to the contrary.

(b) A health care provider who is unwilling to provide directed health care under paragraph (a) that the provider has the legal and actual capability of providing may transfer the principal or declarant to another health care provider willing to provide the directed health care but the provider shall take all reasonable steps to ensure provision of the directed health care until the principal or declarant is transferred.

(c) Nothing in this section alters any legal obligation or lack of legal obligation of a health care provider to provide health care to a principal or declarant who refuses, has refused, or is unable to pay for the health care.

Sec. 27. Minnesota Statutes 1997 Supplement, section 149A.80, subdivision 2, is amended to read:

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 ~~designated~~ 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;~~

(2) the surviving, legally recognized spouse;

(3) the surviving biological or adopted child or children of the decedent over the age of majority, provided that, in the absence of actual knowledge to the contrary, a funeral director or mortician may rely on instructions given by the child or children who represent that they are the sole surviving child, or that they constitute a majority of the surviving children;

(4) the surviving parent or parents of the decedent;

(5) the surviving biological or adopted sibling or siblings of the decedent over the age of majority, provided that, in the absence of actual knowledge to the contrary, a funer-

New language is indicated by underline, deletions by ~~strikeout~~.

al director or mortician may rely on instructions given by the sibling or siblings who represent that they are the sole surviving sibling, or that they constitute a majority of the surviving siblings;

(6) the person or persons respectively in the next degree of kinship in the order named by law to inherit the estate of the decedent; and

(7) the appropriate public or court authority, as required by law.

For purposes of this subdivision, the appropriate public or court authority includes the county board of the county in which the death occurred if the person dies without apparent financial means to provide for final disposition or the district court in the county in which the death occurred.

Sec. 28. Minnesota Statutes 1997 Supplement, section 253B.04, subdivision 1a, is amended to read:

Subd. 1a. VOLUNTARY TREATMENT OR ADMISSION FOR PERSONS WITH MENTAL ILLNESS. (a) A person with a mental illness may seek or voluntarily agree to accept treatment or admission to a facility. If the mental health provider determines that the person lacks the capacity to give informed consent for the treatment or admission, and in the absence of a durable power of attorney for health care power of attorney that authorizes consent, the designated agency or its designee may give informed consent for mental health treatment or admission to a treatment facility on behalf of the person.

(b) The designated agency shall apply the following criteria in determining the person's ability to give informed consent:

(1) whether the person demonstrates an awareness of the person's illness, and the reasons for treatment, its risks, benefits and alternatives, and the possible consequences of refusing treatment; and

(2) whether the person communicates verbally or nonverbally a clear choice concerning treatment that is a reasoned one, not based on delusion, even though it may not be in the person's best interests.

(c) The basis for the designated agency's decision that the person lacks the capacity to give informed consent for treatment or admission, and that the patient has voluntarily accepted treatment or admission, must be documented in writing.

(d) A mental health provider that provides treatment in reliance on the written consent given by the designated agency under this subdivision is not civilly or criminally liable for performing treatment without consent. This paragraph does not affect any other liability that may result from the manner in which the treatment is performed.

(e) A person who receives treatment or is admitted to a facility under this subdivision has the right to refuse treatment at any time or to be released from a facility as provided under subdivision 2. The person or any interested person acting on the person's behalf may seek court review within five days for a determination of whether the person's agreement to accept treatment or admission is voluntary. At the time a person agrees to treatment or admission to a facility under this subdivision, the designated agency or its designee shall inform the person in writing of the person's rights under this paragraph.

New language is indicated by underline, deletions by ~~strikeout~~.

(f) This subdivision does not authorize the administration of neuroleptic medications. Neuroleptic medications may be administered only as provided in section 253B.092.

Sec. 29. Minnesota Statutes 1997 Supplement, section 253B.07, subdivision 1, is amended to read:

Subdivision 1. **PREPETITION SCREENING.** (a) Prior to filing a petition for commitment of or early intervention for a proposed patient, an interested person shall apply to the designated agency in the county of the proposed patient's residence or presence for conduct of a preliminary investigation, except when the proposed patient has been acquitted of a crime under section 611.026 and the county attorney is required to file a petition for commitment. The designated agency shall appoint a screening team to conduct an investigation which shall include:

(i) a personal interview with the proposed patient and other individuals who appear to have knowledge of the condition of the proposed patient. If the proposed patient is not interviewed, reasons must be documented;

(ii) identification and investigation of specific alleged conduct which is the basis for application;

(iii) identification, exploration, and listing of the reasons for rejecting or recommending alternatives to involuntary placement; and

(iv) in the case of a commitment based on mental illness, the following information, if it is known or available: information that may be relevant to the administration of neuroleptic medications, if necessary, including the existence of a declaration under section 253B.03, subdivision 6d, or a durable power of attorney for health care directive under chapter 145C or a guardian, conservator, proxy, or ~~attorney-in-fact agent~~ with authority to make health care decisions for the proposed patient; information regarding the capacity of the proposed patient to make decisions regarding administration of neuroleptic medication; and whether the proposed patient is likely to consent or refuse consent to administration of the medication.

(b) In conducting the investigation required by this subdivision, the screening team shall have access to all relevant medical records of proposed patients currently in treatment facilities. Data collected pursuant to this clause shall be considered private data on individuals. The prepetition screening report is not admissible in any court proceedings unrelated to the commitment proceedings.

(c) When the prepetition screening team recommends commitment, a written report shall be sent to the county attorney for the county in which the petition is to be filed.

(d) The prepetition screening team shall refuse to support a petition if the investigation does not disclose evidence sufficient to support commitment. Notice of the prepetition screening team's decision shall be provided to the prospective petitioner.

(e) If the interested person wishes to proceed with a petition contrary to the recommendation of the prepetition screening team, application may be made directly to the county attorney, who may determine whether or not to proceed with the petition. Notice of the county attorney's determination shall be provided to the interested party.

New language is indicated by underline, deletions by ~~strikeout~~.

(f) If the proposed patient has been acquitted of a crime under section 611.026, the county attorney shall apply to the designated county agency in the county in which the acquittal took place for a preliminary investigation unless substantially the same information relevant to the proposed patient's current mental condition, as could be obtained by a preliminary investigation, is part of the court record in the criminal proceeding or is contained in the report of a mental examination conducted in connection with the criminal proceeding. If a court petitions for commitment pursuant to the rules of criminal or juvenile procedure or a county attorney petitions pursuant to acquittal of a criminal charge under section 611.026, the prepetition investigation, if required by this section, shall be completed within seven days after the filing of the petition.

Sec. 30. Minnesota Statutes 1997 Supplement, section 253B.092, subdivision 2, is amended to read:

Subd. 2. **ADMINISTRATION WITHOUT JUDICIAL REVIEW.** Neuroleptic medications may be administered without judicial review in the following circumstances:

(1) the patient has the capacity to make an informed decision under subdivision 4;

(2) the patient does not have the present capacity to consent to the administration of neuroleptic medication, but prepared a durable power of attorney for health care directive under chapter 145C or a declaration under section 253B.03, subdivision 6d, requesting treatment or authorizing an agent or proxy to request treatment, and the agent or proxy has requested the treatment;

(3) a substitute decision-maker appointed by the court consents to the administration of the neuroleptic medication and the patient does not refuse administration of the medication; or

(4) the substitute decision-maker does not consent or the patient is refusing medication, and the patient is in an emergency situation.

Sec. 31. Minnesota Statutes 1997 Supplement, section 253B.092, subdivision 6, is amended to read:

Subd. 6. **PATIENTS WITHOUT CAPACITY TO MAKE INFORMED DECISION; SUBSTITUTE DECISION-MAKER.** (a) Upon request of any person, and upon a showing that administration of neuroleptic medications may be recommended and that the person may lack capacity to make decisions regarding the administration of neuroleptic medication, the court shall appoint a substitute decision-maker with authority to consent to the administration of neuroleptic medication as provided in this section. The substitute decision-maker must be an individual or a community or institutional multidisciplinary panel designated by the local mental health authority. In appointing a substitute decision-maker, the court shall give preference to a guardian or conservator, proxy, or attorney-in-fact health care agent with authority to make health care decisions for the patient. The court may provide for the payment of a reasonable fee to the substitute decision-maker for services under this section or may appoint a volunteer.

(b) If the person's treating physician recommends treatment with neuroleptic medication, the substitute decision-maker may give or withhold consent to the administration of the medication, based on the standards under subdivision 7. If the substitute decision-maker gives informed consent to the treatment and the person does not refuse, the

New language is indicated by underline, deletions by ~~strikeout~~.

substitute decision-maker shall provide written consent to the treating physician and the medication may be administered. The substitute decision-maker shall also notify the court that consent has been given. If the substitute decision-maker refuses or withdraws consent or the person refuses the medication, neuroleptic medication may not be administered to the person without a court order or in an emergency.

(c) A substitute decision-maker appointed under this section has access to the pertinent sections of the patient's health records on the past or present administration of medication. The designated agency or a person involved in the patient's physical or mental health care may disclose information to the substitute decision-maker for the sole purpose of performing the responsibilities under this section.

(d) At a hearing under section 253B.08, the petitioner has the burden of proving incapacity by a preponderance of the evidence. If a substitute decision-maker has been appointed by the court, the court shall make findings regarding the patient's capacity to make decisions regarding the administration of neuroleptic medications and affirm or reverse its appointment of a substitute decision-maker. If the court affirms the appointment of the substitute decision-maker, and if the substitute decision-maker has consented to the administration of the medication and the patient has not refused, the court shall make findings that the substitute decision-maker has consented and the treatment is authorized. If a substitute decision-maker has not yet been appointed, upon request the court shall make findings regarding the patient's capacity and appoint a substitute decision-maker if appropriate.

(e) If an order for civil commitment or early intervention did not provide for the appointment of a substitute decision-maker or for the administration of neuroleptic medication, the treatment facility may later request the appointment of a substitute decision-maker upon a showing that administration of neuroleptic medications is recommended and that the person lacks capacity to make decisions regarding the administration of neuroleptic medications. A hearing is not required in order to administer the neuroleptic medication unless requested under subdivision 10 or if the substitute decision-maker withholds or refuses consent or the person refuses the medication.

(f) The substitute decision-maker's authority to consent to treatment lasts for the duration of the court's order of appointment or until modified by the court.

If the substitute decision-maker withdraws consent or the patient refuses consent, neuroleptic medication may not be administered without a court order.

(g) If there is no hearing after the preliminary hearing, then the court shall, upon the request of any interested party, review the reasonableness of the substitute decision-maker's decision based on the standards under subdivision 7. The court shall enter an order upholding or reversing the decision within seven days.

Sec. 32. Minnesota Statutes 1996, section 525.55, subdivision 1, is amended to read:

Subdivision 1. **TIME OF NOTICE; TO WHOM GIVEN.** In all cases, upon the filing of the petition the court shall fix the time and place for the hearing and shall order that notice be given of the hearing. At least 14 days prior to the hearing, personal service of the notice shall be made upon the proposed ward or conservatee. Notice by mail post-marked at least 14 days before the hearing shall also be served on:

(1) the spouse, parents, adult children, brothers and sisters;

New language is indicated by underline, deletions by ~~strikeout~~.

(2) a health care agent or proxy appointed pursuant to a health care directive as defined in section 145C.01, a living will under chapter 145B, or other similar document executed in another state and enforceable under the laws of this state; and,

(3) if none of those in clause (1) or (2) are alive or can be located, on the nearest kindred as determined by the court, and on any other persons the court may direct, by mail postmarked at least 14 days prior to the hearing.

If the person is a patient or, resident, or client of any hospital, nursing home, home care agency, or other institution, notice by mail shall also be given to the administrative head of the institution. If the person is a nonresident or if after diligent search cannot be found in this state, notice shall be given in the manner and to those persons as the court may determine.

Sec. 33. Minnesota Statutes 1996, section 525.55, subdivision 2, is amended to read:

Subd. 2. **FORM; SERVICE.** The notice shall be written in language which can be easily understood. Included with the notice shall be a copy of the petition. The notice shall contain information regarding the nature, purpose and legal effects of the guardianship or conservatorship proceedings on the proposed ward or conservatee. The notice shall state that the person may be adjudged incapable of self care for person or property, and by reason thereof, a guardian or conservator may be appointed, and that the adjudication may transfer to the appointed guardian or conservator certain rights, including the right to manage and control property, to enter into contracts and to determine residence. The notice shall further contain information regarding the rights of the proposed ward or conservatee in the proceeding, including the right to attend the hearing, to be represented by an attorney, to oppose the proceeding, and to present evidence. The notice shall state that if the proposed ward or conservatee wishes to exercise the right to be represented by an attorney, that person must either obtain counsel of choice, or ask the court to appoint an attorney to represent that person, and that the county shall pay a reasonable attorney's fee if that person is indigent. The procedure for requesting a court appointed attorney shall be described in the notice. If the proposed ward or conservatee is a patient, resident, or client of any hospital, nursing home, home care agency, or other institution, the notice must further require the institution to advise the court of the existence, if known, of a health care directive, as defined in section 145C.01, executed by the proposed ward or conservatee, a living will executed under chapter 145B, or any other similar document executed in another state and enforceable under the laws of this state.

The process server shall inquire whether the proposed ward or conservatee desires the notice and petition to be read to that person, and shall read the notice and petition if requested to do so. In place of a process server, the court may appoint a visitor to deliver the notice and petition and explain them to the proposed ward or conservatee.

Sec. 34. Minnesota Statutes 1996, section 525.551, subdivision 1, is amended to read:

Subdivision 1. **ATTENDANCE AT HEARING.** If the proposed ward or conservatee is within the state, that person shall be present at the hearing unless in a meeting with a visitor that person specifically waives the right to appear in person or is not able to attend by reason of medical condition as evidenced by a written statement from a licensed physician. The written statement shall be evidence only of the proposed ward's or conservatee's medical inability to attend the hearing, and shall not be considered in determining

New language is indicated by underline, deletions by ~~strikeout~~.

the issue of incapacity. The written statement must also inform the court of the physician's knowledge, if any, of the existence of a health care directive, as defined in section 145C.01, executed by the proposed ward or conservatee, a living will executed under chapter 145B, or any other similar document executed in another state and enforceable under the laws of this state. In any instance in which a proposed ward or conservatee is absent from the hearing, the court shall specify in its findings of fact the reason for non-attendance.

If a visitor delivered the notice and petition pursuant to section 525.55 and the proposed ward or conservatee has waived the right to attend the hearing, the visitor may testify as to the notice and any waiver of the right to appear in person, and as to other matters which may assist the court in determining the need for a guardian or conservator and the extent of the power to be granted.

Sec. 35. Minnesota Statutes 1996, section 525.551, subdivision 5, is amended to read:

Subd. 5. **FINDINGS.** In all cases the court shall make specific written findings of fact, state separately its conclusions of law, and direct the entry of an appropriate judgment or order.

If upon completion of the hearing and consideration of the record the court finds: (a) that the requirements for the voluntary appointment of a conservator or guardian have been met, or (b)(1) that the proposed ward or conservatee is incapacitated as defined in section 525.54; and (2) in need of the supervision and protection of a guardian or conservator; and (3) that no appropriate alternatives to the guardianship or conservatorship exist which are less restrictive of the person's civil rights and liberties, such as those set forth in section 525.54, subdivision 7, it shall enter its order or judgment granting all of the powers set out in section 525.56, subdivision 3, in the case of a guardian of the person, and section 525.56, subdivision 4, in the case of a guardian of the estate, or specifying the powers of the conservator pursuant to section 525.56. The court shall make a finding that appointment of the person chosen as guardian or conservator is in the best interests of the ward or conservatee. Except as provided in section 525.544, subdivision 1, if more than one person has petitioned the court to serve as guardian or conservator, or if the petition is contested, the court shall make a finding that the person to be appointed as guardian or conservator is the most suitable and best qualified person among those who are available before making the appointment. The court's finding as to the best available guardian must specifically address the reasons for the court's determination that the appointment of that person is in the best interests of the ward or conservatee. The court must also clarify the respective legal authorities of a guardian or conservator appointed under this chapter and any existing health care agent or proxy appointed under a health care directive as defined in section 145C.01, a living will under chapter 145B, or other similar document executed in another state and enforceable under the laws of this state.

The court may enumerate in its findings which legal rights the proposed ward or conservatee is incapable of exercising.

Sec. 36. Minnesota Statutes 1996, section 525.9212, is amended to read:

525.9212 MAKING, REVOKING, AND OBJECTING TO ANATOMICAL GIFTS, BY OTHERS.

New language is indicated by underline, deletions by ~~strikeout~~.

(a) Any member of the following classes of persons, in the order of priority listed, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent has made a refusal to make that anatomical gift that is unrevoked at the time of death:

- (1) the spouse of the decedent;
- (2) an adult son or daughter of the decedent;
- (3) either parent of the decedent;
- (4) an adult brother or sister of the decedent;
- (5) a grandparent of the decedent; and

(6) a guardian or conservator of the person of the decedent at the time of death or a health care agent or proxy appointed by the decedent under a health care directive as defined in section 145C.01, a living will under chapter 145B, or other similar document executed in another state and enforceable under the laws of this state.

(b) An anatomical gift may not be made by a person listed in paragraph (a) if:

(1) a person in a prior class is available at the time of death to make an anatomical gift;

(2) the person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(3) the person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(c) An anatomical gift by a person authorized under paragraph (a) must be made by (i) a document of gift signed by the person, or (ii) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient.

(d) An anatomical gift by a person authorized under paragraph (a) may be revoked by any member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(e) A failure to make a decision as to an anatomical gift under paragraph (a) is not an objection to the making of an anatomical gift.

Sec. 37. Minnesota Statutes 1996, section 609.215, subdivision 3, is amended to read:

Subd. 3. ACTS OR OMISSIONS NOT CONSIDERED AIDING SUICIDE OR AIDING ATTEMPTED SUICIDE. (a) A health care provider, as defined in section 145B.02, subdivision 6, who administers, prescribes, or dispenses medications or procedures to relieve another person's pain or discomfort, even if the medication or procedure may hasten or increase the risk of death, does not violate this section unless the medications or procedures are knowingly administered, prescribed, or dispensed to cause death.

(b) A health care provider, as defined in section 145B.02, subdivision 6, who withholds or withdraws a life-sustaining procedure in compliance with chapter 145B or 145C or in accordance with reasonable medical practice does not violate this section.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 38. EFFECT OF AMENDMENTS.

A document executed prior to August 1, 1998, that purports to be a living will under Minnesota Statutes, chapter 145B, a durable power of attorney for health care under Minnesota Statutes, chapter 145C, or a declaration regarding intrusive mental health treatment under Minnesota Statutes, section 253B.03, subdivision 6a, is valid if the document:

- (1) complied with the law in effect on the date it was executed; or
- (2) complies with the requirements of Minnesota Statutes, section 145C.03.

If the document complied with the law in effect on the date it was executed but does not also comply with the requirements of Minnesota Statutes, section 145C.03, it shall be given effect in accordance with the laws in effect on the date it was executed, unless the document provides otherwise.

Nothing in sections 1 to 38 impairs the evidentiary effect under common law or reasonable medical practice with respect to other written or oral expressions of an individual's desires regarding health care.

Sec. 39. EFFECTIVE DATE.

Sections 1 to 38 are effective August 1, 1998.

Presented to the governor April 10, 1998

Signed by the governor April 21, 1998, 10:43 a.m.

CHAPTER 400—S.F.No. 1169

An act relating to personal watercraft; modifying provisions for the operation of personal watercraft; amending Minnesota Statutes 1996, sections 86B.101, subdivision 2; 86B.313, subdivisions 1, 3, and 4; and 86B.805, by adding a subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1996, section 86B.101, subdivision 2, is amended to read:

Subd. 2. **YOUTH WATERCRAFT SAFETY COURSE.** (a) The commissioner shall establish an educational course and a testing program for personal watercraft and watercraft operators and for persons age 12 or older but younger than age 18 required to take the watercraft safety course. The commissioner shall prescribe a written test as part of the course. A personal watercraft educational course and testing program that emphasizes safe and legal operation must be required for persons age 13 or older but younger than age 18 operating personal watercraft.

(b) The commissioner shall issue a watercraft operator's permit to a person age 12 or older but younger than age 18 who successfully completes the educational program and the written test.

New language is indicated by underline, deletions by ~~strikeout~~.