

TENNESSEE STATUTE
TITLE 34, CHAPTER 6, PART 2
DURABLE POWER OF ATTORNEY FOR HEALTH CARE

34-6-201. Definitions.

As used in this part, unless the context otherwise requires:

(1) "Durable power of attorney for health care" means a durable power of attorney to the extent that it authorizes an attorney in fact to make health care decisions for the principal;

(2) "Health care" means any care, treatment, service or procedure to maintain, diagnose or treat an individual's physical or mental condition, and includes medical care as defined in § 32-11-103(5);

(3) "Health care decision" means consent, refusal of consent or withdrawal of consent to health care;

(4) "Health care institution" means a health care institution as defined in § 68-11-102;

(5) "Health care provider" means a person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession; and

(6) "Person" includes an individual, corporation, partnership, association, the state, a city, county, city and county, or other public entity or governmental subdivision or agency, or any other legal entity.

[Acts 1990, ch. 831, § 2.]

34-6-202. Applicability of part.

(a) A durable power of attorney for health care executed after July 1, 1991, is effective to authorize the attorney in fact to make health care decisions for the principal only if the power of attorney complies with this part.

(b) A durable power of attorney for health care executed after April 8, 1990, and before July 1, 1991, is effective to authorize the attorney in fact to make health care decisions for the principal if the power of attorney was executed in compliance with this part as in effect on such date.

(c) A durable power of attorney executed before April 9, 1990, that specifically authorizes the attorney in fact to make decisions relating to the medical or health care of the principal is deemed to be valid under this part, notwithstanding that it fails to comply with all of the requirements of this part.

(d) Nothing in this part affects the validity of a decision made under a durable power of attorney before April 9, 1990.

(e) Any durable power of attorney for health care properly executed before May 5, 1995, shall be enforceable notwithstanding any failure to notarize signatures of witnesses thereto.

[Acts 1990, ch. 831, § 3; 1991, ch. 344, § 9; 1995, ch. 177, § 15.]

34-6-203. Requirements.

(a) An attorney in fact under a durable power of attorney for health care may not make health care decisions unless all of the following requirements are satisfied:

(1) The durable power of attorney for health care specifically authorizes the attorney in the fact to make health care decisions;

(2) The durable power of attorney for health care contains the date of its execution; and

(3) The durable power of attorney for health care is executed by the following method: the durable power of attorney for health care is signed and acknowledged before a notary public by the principal and is signed by at least two (2) witnesses who witnessed the signing of the instrument by the principal, with each witness making the following declaration in substance: "I declare under penalty of perjury under the laws of Tennessee that the person who signed this document is personally known to me to be the principal; that the principal signed this durable power of attorney in my presence; that the principal appears to be of sound mind and under no duress, fraud or undue influence; that I am not the person appointed as attorney in fact by this document; that I am not a health care provider, an employee of a health care provider, the operator of a health care institution nor an employee of an operator of a health care institution; that I am not related to the principal by blood, marriage, or adoption; that, to the best of my knowledge, I do not, at the present time, have a claim against any portion of the estate of the principal upon the principal's death; and that, to the best of my knowledge, I am not entitled to any part of the estate of the principal upon the death of the principal under a will or codicil thereto now existing, or by operation of law."

(b) Except as provided in subsection (f):

(1) Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a health care institution nor an employee of an operator of a health care institution may be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care; and

(2) A health care provider or employee of a health care provider may not act as an attorney in fact to make health care decisions if the health care provider becomes the principal's treating health care provider.

(c) A conservator may not be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care executed by a person who is a conservatee under the laws of this state where the conservatee has the power to execute legal documents, unless:

(1) The power of attorney is otherwise valid;

(2) The conservatee is represented by legal counsel; and

(3) The attorney representing the conservatee signs a certificate stating in substance:

"I am an attorney authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning my client's rights in connection with this power of attorney and the applicable law, and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this durable power of attorney for health care."

(d) None of the following may be used as a witness under subsection (a):

(1) A health care provider;

(2) An employee of a health care provider;

(3) The person named as attorney in fact;

(4) The operator of a health care institution; or

(5) An employee of a health care institution.

(e) At least one (1) of the persons used as a witness under subsection (a) shall be a person who is not one (1) of the following:

(1) A relative of the principal by blood, marriage or adoption; or

(2) A person who would be entitled to any portion of the estate of the principal upon the principal's death under any will or codicil thereto of the principal existing at the time of execution of the durable power of attorney or by operation of law then existing.

(f) An employee of the treating health care provider or an employee of an operator of a health care institution may be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care if:

(1) The employee so designated is a relative of the principal by blood, marriage or adoption; and

(2) The other requirements of this part are satisfied.

[Acts 1990, ch. 831, § 4; 1991, ch. 344, § 10; 1995, ch. 177, § 3.]

34-6-204. Attorney in fact - Powers - Limitations.

(a) (1) Unless the durable power of attorney for health care provides otherwise, or unless a court with appropriate jurisdiction finds by clear and convincing evidence that the attorney in fact is acting on behalf of the principal in bad faith, the attorney in fact designated in such durable power of attorney who is known to the health care provider to be available and willing to make health care decisions has priority over any other person to act for the principal in all matters of health care decisions.

(2) (A) Notwithstanding the provisions of the Uniform Durable Power of Attorney Act, compiled in part 1 of this chapter, if a court appoints a conservator, guardian of the estate or other fiduciary, such fiduciary shall not have the power to revoke or amend a durable power of attorney for healthcare nor replace the attorney in fact designated in such power of attorney.

(B) Upon application and good cause shown, when appointing such fiduciary, a court may revoke or amend a durable power of attorney for health care or replace the attorney in fact designated in such power.

(b) Subject to any limitations in the durable power of attorney for health care, the attorney in fact designated in such durable power of attorney may make health care decisions for the principal, before or after the death of the principal, to the same extent as the principal could make health care decisions for such principal if the principal had the capacity to do so, including:

(1) Making a disposition under the Uniform Anatomical Gift Act, compiled in title 68, chapter 30;

(2) Authorizing an autopsy pursuant to the Post Mortem Examination Act, compiled in title 38, chapter 7; and

(3) Directing the disposition of remains pursuant to title 68, chapter 4.

(c) Nothing in this part affects any right the person designated as attorney in fact may have, apart from the durable power of attorney for health care, to make or participate in the making of health care decisions on behalf of the principal.

(d) Subject to any limitations in the durable power of attorney for health care, the attorney in fact designated in such durable power of attorney may make health care decisions as provided in this part for the principal who has a terminal condition as defined in § 32-11-103(9). The decision to withhold or withdraw health care may be made by the attorney in fact permitting the principal to die naturally with only the administration of palliative care as defined in § 32-11-103(6).

[Acts 1990, ch. 831, § 5; 1991, ch. 344, § 11; 2004, ch. 771, § 2.]

34-6-205. Warning Statement.

If a person other than the principal prepares a durable power of attorney for health care for the principal, the document shall contain the following warning statement. The failure to include the warning statement in the document shall not affect the validity of the document:

WARNING TO PERSON EXECUTING THIS DOCUMENT

This is an important legal Document. Before executing this document you should know these important facts.

This document gives the person you designate as your agent (the attorney in fact) the power to make health care decisions for you. Your agent must act consistently with your desires as stated in this document.

Except as you otherwise specify in this document, this document gives your agent the power to consent to your doctor not giving treatment or stopping treatment necessary to keep you alive.

Notwithstanding this document, you have the right to make medical and other health care decisions for yourself so long as you can give informed consent with respect to the particular decision. In addition, no treatment may be given to you over your objection, and health care necessary to keep you alive may not be stopped or withheld if you object at the time.

This document gives your agent authority to consent, to refuse to consent, or to withdraw consent to any care, treatment, service, or procedure to maintain, diagnose or treat a physical or mental condition. This power is subject to any limitations that you include in this document. You may state in this document any types of treatment that you do not desire. In addition, a court can take away the power of your agent to make health care decisions for you if your agent: (1) authorizes anything that is illegal; or (2) acts contrary to your desires as stated in this document.

You have the right to revoke the authority of your agent by notifying your agent or your treating physician, hospital or other health care provider orally or in writing of the revocation.

Your agent has the right to examine your medical records and to consent to their disclosure unless you limit this right in this document.

Unless you otherwise specify in this document, this document gives your agent the power after you die to: (1) authorize an autopsy; (2) donate your body or parts thereof for transplant or therapeutic or educational or scientific purposes; and (3) direct the disposition of your remains.

If there is anything in this document that you do not understand, you should ask an attorney to explain it to you.

[Acts 1990, ch. 831, § 5.]

34-6-206. Access to medical records and information.

Except to the extent the right is limited by the durable power of attorney for health care, an attorney in fact designated to make health care decisions under such durable power of attorney has the same right as the principal to receive information regarding the proposed health care, to receive and review medical records, and to us consent to the disclosure of medical records.

[Acts 1990, ch. 831, § 6.]

34-6-207. Revocation.

(a) The principal may, after executing a durable power of attorney for health care, do any of the following:

(1) Revoke the appointment of the attorney in fact under the durable power of attorney for health care by notifying the attorney in fact orally or in writing; or

(2) Revoke the authority granted to the attorney in fact to make health care decisions by notifying the health care provider orally or in writing.

(b) If the principal notifies the health care provider orally or in writing that the authority granted to the attorney in fact to make health care decisions is revoked, the health care provider shall make the notification a part of the principal's medical records and shall make a reasonable effort to notify the attorney in fact of the revocation.

(c) It is presumed that the principal has the capacity to revoke a durable power of attorney for health care. This presumption is a presumption affecting the burden of proof.

(d) Unless it provides otherwise, a valid durable power of attorney for health care revokes any prior durable power of attorney for health care.

(e) Unless the durable power of attorney for health care expressly provides otherwise, if after executing a durable power of attorney for health care the principal's marriage is dissolved or annulled, the dissolution or annulment revokes any designation of the former spouse as an attorney in fact to make health care decisions for the principal.

(f) If authority granted by a durable power of attorney for health care is revoked under this section, a person is not subject to criminal prosecution or civil liability for acting in good faith reliance upon such durable power of attorney unless the person has actual knowledge of the revocation.

(g) The authority of an attorney in fact acting under a durable power of attorney for health care as provided in this part may be terminated or revoked only pursuant to this section and shall not be affected by the existence of a living will executed by the principal.

[Acts 1990, ch. 831, § 7.]

34-6-208. Liability of health care provider.

(a) Subject to any limitations stated in the durable power of attorney for health care, and, subject to subsection (b) and §§ 34-6-210 - 34-6-212, a health care provider is not subject to criminal prosecution, civil liability or professional disciplinary action except to the same extent as would be the case if the principal, having had the capacity to give informed consent, had made the health care decision on such principal's own behalf under like circumstances, if the health care provider relies on a health care decision and both of the following requirements are satisfied:

(1) The decision is made by an attorney in fact who the health care provider believes in good faith is authorized under this part to make the decision; And

(2) The health care provider believes in good faith that the decision is not inconsistent with the desires of the principal as expressed in the durable power of attorney for health care or otherwise made known to the health care provider, and, if the decision is to withhold or withdraw health care necessary to keep the principal alive, the health care provider has made a good faith effort to determine the desires of the principal to the extent that the principal is able to convey those desires to the health care provider and the results of the effort are made a part of the principal's medical records.

(b) Nothing in this part authorizes a health care provider to do anything illegal.

(c) Notwithstanding the health care decision of the attorney in fact designated by a durable power of attorney for health care, the health care provider is not subject to criminal prosecution, civil liability, or professional disciplinary action for failing to withdraw health care necessary to keep the principal alive.

[Acts 1990, ch. 831, § 8.]

34-6-209. Emergency care.

This part does not affect the law governing health care treatment in an emergency.

[Acts 1990, ch. 831, § 9.]

34-6-210. Principal's objection to withholding or withdrawal of care.

Nothing in this part authorizes an attorney in fact to consent to the withholding or withdrawal of health care necessary to keep the principal alive, if the principal objects to the withholding or withdrawal of the health care. In such instance, that health care decision shall be governed by the law that would apply if there were no durable power of attorney for health care; however, with respect to other and subsequent health care decisions, the durable power of attorney for health care shall remain in effect unless expressly revoked as provided in § 34-6-207.

[Acts 1990, ch. 831, § 10.]

34-6-211. Required execution of durable power of attorney for health care prohibited.

No health care provider, medical service plan, health maintenance organization, insurer issuing disability insurance, self-insured employee welfare plan, or nonprofit hospital plan or similar insurance or medical plan may condition admission to a health care institution, or the providing of treatment, or insurance, on the requirement that a patient execute a durable power of attorney for health care.

[Acts 1990, ch. 831, § 11.]

34-6-212. Applicability of § 32-11-110(a).

The provisions of § 32-11-110 shall apply to the provisions of this part.

[Acts 1990, ch. 831, § 12.]

34-6-213. Life insurance unaffected.

The execution of a durable power of attorney for health care as provided in this part shall not affect in any manner the sale, procurement or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of health care from an insured principal.

[Acts 1990, ch. 831, § 12.]

34-6-214. Transfer of patient by health care provider.

Any health care provider shall arrange for the prompt and orderly transfer of a patient to the care of others when as a matter of conscience the health care provider cannot implement the health care decisions made by the attorney in fact for the principal as provided in a durable power of attorney for health care.

[Acts 1990, ch. 831, § 13.]

34-6-215. Power of attorney executed outside Tennessee - When effective.

A durable power of attorney for health care that is executed outside of this state by a nonresident of this state at the time of execution shall be given effect in this state if that durable power of attorney for health care is in compliance with either the provisions of this chapter or the laws of the state of the principal's residence.

[Acts 1991, ch. 344, § 12.]

34-6-216. Validity.

If the provisions of a valid durable power of attorney for health care, executed pursuant to the provisions of this part, designates a person other than the child's parent to consent to such treatments or procedures, the provisions of the power of attorney shall control.

[Acts 1995, ch. 317, § 1.]

34-6-217. Effect and interpretation of durable powers of attorney.

(a) A durable power of attorney for health care entered into before July 1, 2004, under this part shall be given effect and interpreted in accord with this part.

(b) A durable power of attorney for health care entered into on or after July 1, 2004, that evidences an intent that it is entered into under this part shall be given effect and interpreted in accord with this part.

(c) A durable power of attorney for health care entered into on or after July 1, 2004, that does not evidence an intent that it is entered into under this part may, if it complies with the provisions of the Tennessee Health Care Decisions Act, compiled in title 68, chapter 11, part 18, be given effect as an advance directive under that act.

[Acts 2004, ch. 862, § 5.]

34-6-218. Release of personal health information to determine capacity.

Where it is necessary, under the terms of a durable power of attorney to determine the mental or physical incapacity of a patient, a healthcare provider may release personal health information to a licensed physician or licensed attorney at law if the physician or attorney at law signs and furnishes the healthcare provider with an affidavit that the release of information is necessary to determine the mental or physical incapacity of the patient, or of the agent or other fiduciary under a durable power of attorney for healthcare that was signed by the patient where incapacity causes the document to come into effect, discontinues its effect or calls for a change in a fiduciary acting thereunder.

[Acts 2004, ch. 866, § 5.]