

Kinney

1 (4)

91 LSO - 0670

SENATE FILE

2207

TH

SF0207

AN ACT to create W.S. 3-5-104; and to amend W.S. 3-5-103 relating to medical power of attorney; authorizing designation of an agent to make health care decisions for a principal; granting powers to the agent; creating a presumption of competency; providing for revocation; conforming statutes; and providing for an effective date.

SENATE FILE 0207

Introduced by:

Carol G. Walters

DATE	ACTION	DATE	ACTION
JAN 16 1991	INTRODUCED	FEB 21 1991	Die in Comm.
	READ FIRST TIME		
	REFERRED TO COM. NO. <u>4</u>		
	DELIVERED TO COM. NO. <u>4</u>		
JAN 23 1991	STANDING COMM. REPORT		
	RECOMMENDED DO PASS		
JAN 25 1991	CONSIDERED IN COM. BY WHOLE		
	AMENDED AS FOLLOWS SF0207SW/A		
	AND FURTHER AMENDED SF0207SW/AC		
	DO PASS		
JAN 28 1991	READ SECOND TIME		
	AMENDED AS FOLLOWS		
	SF0207521/A		
	SF0207523/AC		
	DO PASS		
JAN 29 1991	READ THIRD TIME		
	CONSENT LIST		
	PASSED		
	AYES 22, NAYS 2, EXCUSED 0, ABSENT 0		
	Sent to LSO		
1-29-91	ENGROSSED		
1-30-91	Sent to House		
FEB 4 1991	READ FIRST TIME		
	REFERRED TO COM. NO. _____		
	DELIVERED TO COM. NO. _____		

CONTINUED ON BACK

SF 207 3rd Date 1-29-91

SENATE ROLL CALL

FIFTY-FIRST WYOMING LEGISLATURE

	Ayes	Noes	Excused	Absent
APPLEGATE	✓			
BURKE	✓			
BYRD	✓			
CAMERON	✓			
COE	✓			
DIXON		✓		
EDDINS	✓			
FANOS	✓			
GERINGER	✓			
GRIEVE	✓			
GUICE	✓			
HEALY	✓			
HERBST	✓			
HOWARD	✓			
KINNEY	✓			
KINNISON	✓			
LALONDE	✓			
MADER		✓		
MALDONADO	✓			
PECK	✓			
PERRY	✓			
PREVEDEL	✓			
REESE	✓			
SCOTT	✓			
TRUE				
TWIFORD	✓			
VINICH	✓			
YORDY	✓			
ZIMMER	✓			
ZIMMERMAN	✓			
MR. PRESIDENT	✓			

PRESENT _____ AYES 28

NOES 2

EXCUSED _____

ABSENT _____

TOTAL 30

House of Intro
To Com. No. _____
Stand Report Do ___ Amd ___ Not ___
Com Whole Do ___ Amd ___ Not ___
2nd Reading Amd ___
3rd Reading Amd ___ Pass ___ Fail ___

Second House
To Com No. _____
Stand Report Do ___ Amd ___ Not ___
Com Whole Do ___ Amd ___ Not ___
2nd Reading Amd ___
3rd Reading Amd ___ Pass ___ Fail ___

ENGROSSED

1991

STATE OF WYOMING

91LSO-0670.ENG

SENATE FILE NO. 0207

Medical power of attorney.

Sponsored by: Senator(s) KINNEY, HERBST, VINICH and YORDY and
Representative(s) ALDEN, TIPTON and VLASTOS

A BILL

for

1 AN ACT to create W.S. 3-5-104; and to amend W.S. 3-5-103
2 relating to medical power of attorney; authorizing desig-
3 nation of an agent to make health care decisions for a
4 principal; granting powers to the agent; creating a pre-
5 sumption of competency; providing for revocation; conform-
6 ing statutes; and providing for an effective date.

7 Be It Enacted by the Legislature of the State of Wyoming:

8 Section 1. W.S. 3-5-104 is created to read:

9 3-5-104. Medical power of attorney.

10 (a) Any person, referred to in this section as the

1 principal, who is not mentally incompetent and is not a
2 minor may designate another person to act as the attorney-
3 in-fact, referred to in this section as the agent, for the
4 principal to make health care and treatment decisions on
5 behalf of the principal. The designation shall be writ-
6 ten, dated and signed by the principal and witnessed by
7 one (1) of the following methods:

8 (i) The durable power of attorney is signed by
9 at least two (2) witnesses each of whom witnessed either
10 the signing of the instrument by the principal or the
11 principal's acknowledgment of the signature or of the
12 instrument, each witness making the following declaration
13 in substance: "I declare under penalty of perjury under
14 the laws of Wyoming that the person who signed or acknowl-
15 edged this document is personally known to me to be the
16 principal, that the principal signed or acknowledged this
17 durable power of attorney in my presence, that the princi-
18 pal appears to be of sound mind and under no duress,
19 fraud, or undue influence, that I am not the person
20 appointed as attorney in fact by this document, and that I
21 am not a health care provider, an employee of a health
22 care provider, the operator of a community care facility,
23 an employee of an operator of a community care facility,

1 the operator of a residential care facility for the
2 elderly, nor an employee of an operator of a residential
3 care facility for the elderly." At least one (1) of the
4 witnesses must also have signed the following declaration:
5 "I further declare under penalty of perjury under the laws
6 of Wyoming that I am not related to the principal by
7 blood, marriage, or adoption, and, to the best of my
8 knowledge, I am not entitled to any part of the estate of
9 the principal upon the death of the principal under a will
10 now existing or by operation of law.";

11 (ii) The durable power of attorney is sworn to
12 and acknowledged before a notary public or other person
13 authorized to administer oaths.

14 (b) Except as provided in subsection (e) of this sec-
15 tion:

16 (i) Neither the treating health care provider
17 nor an employee of the treating health care provider, nor
18 an operator of a community care facility or residential
19 care facility for the elderly nor an employee of an opera-
20 tor of a community care facility or residential care
21 facility for the elderly, may be designated as the attor-
22 ney in fact to make health care decisions under a durable

1 power of attorney;

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

6 (c) None of the following may be used as a witness
7 under subsection (a) of this section:

8 (i) A health care provider;

9 (ii) An employee of a health care provider;

10 (iii) The attorney in fact;

11 (iv) The operator of a community care facility;

12 (v) An employee of an operator of a community
13 care facility;

14 (vi) The operator of a residential care facility
15 for the elderly;

16 (vii) An employee of an operator of a residen-
17 tial care facility for the elderly.

18 (d) At least one (1) of the persons used as a witness
19 under subsection (a) of this section shall be a person who

1 is not one (1) of the following:

2 (i) A relative of the principal by blood, mar-
3 riage or adoption;

4 (ii) A person who would be entitled to any por-
5 tion of the estate of the principal upon his or her death
6 under any will or codicil thereto of the principal exist-
7 ing at the time of execution of the durable power of
8 attorney or by operation of law then existing.

9 (e) An employee of the treating health care provider
10 or an employee of an operator of a community care facility
11 or an employee of a residential care facility for the
12 elderly may be designated as the attorney in fact to make
13 health care decisions under a durable power of attorney
14 if:

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

17 (ii) The other requirements of this article are
18 satisfied.

19 (f) The agent may on behalf of the principal:

20 (i) Consent to the provision, withholding or

1 discontinuance of health care, treatment, service or diag-
2 nostic procedure;

3 (ii) Discuss the health condition and other
4 health related matters of the principal with health care
5 providers; and

6 (iii) Obtain information and sign documents nec-
7 essary to accomplish health related decisions.

8 (g) The medical power of attorney may be created:

9 (i) By a medical power of attorney instrument;

10 (ii) Within a validly executed living will as
11 provided in W.S. 35-22-101 through 35-22-109; or

12 (iii) Within a validly executed durable power of
13 attorney as provided in this chapter.

14 (h) The principal of a medical power of attorney exe-
15 cuted in accordance with this section is presumed to be
16 competent. A person who contests the presumption must
17 prove to a reasonable degree of medical certainty that the
18 principal was incompetent at the time the medical power of
19 attorney was executed.

20 (j) A medical power of attorney may be revoked as

1 prescribed in W.S. 3-5-103.

2 Section 2. W.S. 3-5-103 is amended to read:

3 CHAPTER 5

4 DURABLE AND MEDICAL POWERS OF ATTORNEY

5 3-5-103. Revocation of power of attorney by recorda-
6 tion. Unless the power of attorney otherwise specifically
7 provides, any power of attorney executed after the effec-
8 tive date of this act, including but not limited to powers
9 of attorney described in W.S. 3-5-101 or 3-5-102 AND A
10 MEDICAL POWER OF ATTORNEY DESCRIBED IN W.S. 3-5-104, may
11 be revoked by recording an instrument of revocation with a
12 true copy of the power of attorney attached, in the office
13 of the county clerk of the county in which the principal
14 resides. Constructive notice of the revocation is given
15 from and after the date of recording the instrument of
16 revocation.

17 Section 3. This act is effective July 1, 1991.

18 (END)

THE LEGISLATURE OF THE STATE OF WYOMING

Senate

Cheyenne,January..22....., 1991...

Mr. President:

Your Committee No.4..... on..... Education, Health and Welfare
to whom was referred.....SF..... No.....0207.....
respectfully reports same back to the Senate with the recommendation that
it DO PASS.

AYES: Senators Eddins, Byrd, Healy, Howard and Kinney.

Boyd L. Eddins
.....
Boyd L. Eddins

Chairman

SF0207S22/AC

CORRECTED COPY

committee of the whole

Perry

1-28-71

Delete the Kinney ~~Second Reading~~ Amendment (SF0207SW1/A)
entirely. Further amend as follows:

Page 3-line 6

Delete "by clear and convincing evidence"
insert "to a reasonable degree of medical
certainty that". PERRY

mark

Delete the Burke Committee of the Whole Amendment (SF0207SW2/AC) entirely and further amend as follows:

Page 2-line 6 After "principal" delete balance of line and insert "and witnessed by one (1) of the following methods:".

Page 2-line 7 Delete entirely and insert new subsections and renumber subsequent subsections accordingly:

"(i) The durable power of attorney is signed by at least two (2) witnesses each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature or of the instrument, each witness making the following declaration in substance: "I declare under penalty of perjury under the laws of Wyoming that the person who signed or acknowledged this document is personally known to me to be the principal, that the principal signed or acknowledged 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, and that I am not a health care provider, an employee of a health care provider, the operator of a community care facility, an employee of an operator of a community care facility, the operator of a residential care facility for the elderly, nor an employee of an operator of a residential care facility for the elderly." At least one (1) of the witnesses must also have signed the following declaration: "I further declare under penalty of perjury under the laws of Wyoming that I am not related to the principal by blood, marriage, or adoption, and, 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 now existing or by operation of law.";

(ii) The durable power of attorney is sworn to and acknowledged before a notary public or other person authorized to administer oaths.

(b) Except as provided in subsection (e) of this section:

(i) Neither the treating health care provider nor an employee of the treating health care provider, nor an operator of a community care facility or residential care facility for the elderly nor an employee of an operator of a community care facility or residential care facility for the elderly, may be designated as the attorney in fact to make health care decisions under a durable power of attorney;

(ii) 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) None of the following may be used as a witness under subsection (a) of this section:

- (i) A health care provider;
- (ii) An employee of a health care provider;
- (iii) The attorney in fact;
- (iv) The operator of a community care facility;
- (v) An employee of an operator of a community care facility;
- (vi) The operator of a residential care facility for the elderly;
- (vii) An employee of an operator of a residential care facility for the elderly.

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

- (i) A relative of the principal by blood, marriage or adoption;
- (ii) A person who would be entitled to any portion of the estate of the principal upon his or her 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.

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

- (i) The employee so designated is a relative of the principal by blood, marriage or adoption; and
- (ii) The other requirements of this article are satisfied." YORDY

Dave

SF0207SW1/ **A**

1-25-91

Page 2-line 1

After first "not" insert "currently adjudicated". KINNEY

Done

Page 2-line 7

Before "." insert "or other person autho-
rized to administer oaths". BURKE

mark

✓ Delete the Burke Committee of the Whole Amendment (SF0207SW2/AC) entirely and further amend as follows:

✓ Page 2-line 6 After "principal" delete balance of line and insert "and witnessed by one (1) of the following methods:".

✓ Page 2-line 7 Delete entirely and insert new subsections and renumber subsequent subsections accordingly:

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SF0207SW1/ *A*

Page 2-line 1

After first "not" insert "currently adjudicated". KINNEY
*Dave*SF0207SW2/ *AC*

CORRECTED COPY

Page 2-line 7

Before "." insert "or other person authorized to administer oaths". BURKE

JAN 28 1991

(c) None of the following may be used as a witness under subsection (a) of this section:

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- (v) An employee of an operator of a community care facility;
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- (vii) An employee of an operator of a residential care facility for the elderly.

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

- (i) A relative of the principal by blood, marriage or adoption;
- (ii) A person who would be entitled to any portion of the estate of the principal upon his or her 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.

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

- (i) The employee so designated is a relative of the principal by blood, marriage or adoption; and
- (ii) The other requirements of this article are satisfied.". YORDY

Dave

SF0207S22/AC

CORRECTED COPY

✓Delete the Kinney Committee of the Whole Amendment
(SF0207SW1/A) entirely. Further amend as
follows:

✓Page 3-line 6 Delete "by clear and convincing evidence"
insert "to a reasonable degree of medical
certainty that". PERRY

House of Intro
 To Com. No. _____
 Stand Report Do Amd Not _____
 Com Whole Do Amd Not _____
 2nd Reading Amd _____
 3rd Reading Amd Pass Fail _____

Second House
 To Com No. _____
 Stand Report Do Amd Not _____
 Com Whole Do Amd Not _____
 2nd Reading Amd _____
 3rd Reading Amd Pass Fail _____

INTRODUCED

1991

STATE OF WYOMING

91LSO-0670.01

SENATE FILE NO. 0207

Medical power of attorney.

Sponsored by: Senator(s) KINNEY, HERBST and YORDY and
 Representative(s) ALDEN, TIPTON and VLASTOS

A BILL

for

1 AN ACT to create W.S. 3-5-104; and to amend W.S. 3-5-103
 2 relating to medical power of attorney; authorizing desig-
 3 nation of an agent to make health care decisions for a
 4 principal; granting powers to the agent; creating a pre-
 5 sumption of competency; providing for revocation; conform-
 6 ing statutes; and providing for an effective date.

7 Be It Enacted by the Legislature of the State of Wyoming:

8 Section 1. W.S. 3-5-104 is created to read:

9 3-5-104. Medical power of attorney.

10 (a) Any person, referred to in this section as the

- 1 -

**NO SIGNIFICANT FISCAL OR
 PERSONNEL IMPACT AT STATE LEVEL**

SF 207

1 principal, who is not mentally incompetent and is not a
2 minor may designate another person to act as the attorney-
3 in-fact, referred to in this section as the agent, for the
4 principal to make health care and treatment decisions on
5 behalf of the principal. The designation shall be writ-
6 ten, dated and signed by the principal in the presence of
7 two (2) adult, disinterested witnesses.

8 (b) The agent may on behalf of the principal:

9 (i) Consent to the provision, withholding or
10 discontinuance of health care, treatment, service or diag-
11 nostic procedure;

12 (ii) Discuss the health condition and other
13 health related matters of the principal with health care
14 providers; and

15 (iii) Obtain information and sign documents nec-
16 essary to accomplish health related decisions.

17 (c) The medical power of attorney may be created:

18 (i) By a medical power of attorney instrument;

19 (ii) Within a validly executed living will as
20 provided in W.S. 35-22-101 through 35-22-109; or

1 (iii) Within a validly executed durable power of
2 attorney as provided in this chapter.

(d) The principal of a medical power of attorney executed in accordance with this section is presumed to be competent. A person who contests the presumption must prove by clear and convincing evidence the principal was incompetent at the time the medical power of attorney was executed.

9 (e) A medical power of attorney may be revoked as
10 prescribed in W.S. 3-5-103.

11 Section 2. W.S. 3-5-103 is amended to read:

12 CHAPTER 5

13 DURABLE AND MEDICAL POWERS OF ATTORNEY

14 3-5-103. Revocation of power of attorney by recorda-
15 tion. Unless the power of attorney otherwise specifically
16 provides, any power of attorney executed after the effec-
17 tive date of this act, including but not limited to powers
18 of attorney described in W.S. 3-5-101 or 3-5-102 AND A
19 MEDICAL POWER OF ATTORNEY DESCRIBED IN W.S. 3-5-104, may
20 be revoked by recording an instrument of revocation with a
21 true copy of the power of attorney attached, in the office

1 of the county clerk of the county in which the principal
2 resides. Constructive notice of the revocation is given
3 from and after the date of recording the instrument of
4 revocation.

5 Section 3. This act is effective July 1, 1991.

6 (END)