

CAYMAN ISLANDS



HEALTH CARE DECISIONS LAW, 2019

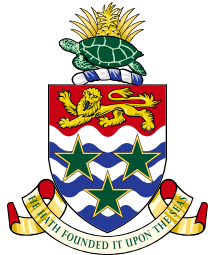
(Law 5 of 2019)

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CAYMAN ISLANDS

(Law 5 of 2019)

I Assent,

**Martyn Roper**
Governor

Date: 14th May, 2019

HEALTH CARE DECISIONS LAW, 2019**A LAW TO PROVIDE FOR HEALTH CARE DIRECTIVES; AND FOR INCIDENTAL AND
CONNETED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY**Short title**

1. This Law may be cited as the *Health Care Decisions Law, 2019*.

Interpretation

2. In this Law —

“**acting**”, on a directive, means —

- (a) for a registered practitioner, to provide health care, in a way wished for under the directive, including, for example, a wish to be denied particular health care or any health care (except under a barred provision); or
- (b) for a proxy, to make a proxy decision that the directive-maker is to be provided health care in a way wished for under the directive, including, for example, a wish to be denied particular health care or any health care (except under a barred provision);

“**advance health care directive**” means a document made by a person expressing that person’s health care wishes in the event that that person becomes mentally incompetent, including, for example, that that person —

(a) wishes to be denied life-sustaining measures if that person becomes terminally ill; or

(b) does not wish to undergo another stated type of health care;

“advance health care directive principles” means the principles for applying and making decisions and orders under this Law;

“appeal” means an appeal under section 47;

“attorney” means the grantee of a power of attorney given under the *Powers of Attorney Law (1996 Revision)*;

“barred provision” means a provision of a directive that is ineffective pursuant to section 14;

“best interest”, of a directive-maker, means the directive-maker’s proper health care and the protection of the directive-maker’s health interests, having regard to —

(a) the relevant guidelines of the General Medical Council of the United Kingdom; and

(b) the Code of Ethics and Standards of Practice under section 35 of the *Health Practice Law (2017 Revision)*;

“brainstem death” means an irreversible loss of the capacity of consciousness combined with the irreversible loss of all brainstem functions, including the capacity to breathe;

“civilly liable” includes —

(a) liability for professional misconduct; and

(b) susceptibility to sanction or other adverse action for contravening a code of professional ethics or a departure from an accepted form of professional conduct;

“Court” means the Grand Court;

“deny”, in relation to health care to a person, means to withdraw or withhold health care (including life-sustaining measures) from that person;

“death” includes brainstem death and when there is an irreversible cessation of circulation of blood in a person’s body;

“directive” means —

(a) an advance health care directive generally; and

(b) for a provision of this Law about a particular proxy, the directive under which the proxy was appointed;

“directive-maker” means —

(a) a person who makes a directive pursuant to this Law; and

(b) for a provision of this Law about a particular proxy, the directive-maker who appointed the proxy;



“**doctor**” means an individual registered as a medical doctor under Schedule 4 of the *Health Practice Law (2017 Revision)*;

“**Ethics Committee**”, of a hospital, means that hospital’s Ethics Committee established or designated under section 42;

“**function**” includes a duty, power or responsibility;

“**health care**” means a registered practitioner doing either or both of the following —

- (a) providing a measure, procedure, service, or medical treatment to diagnose, maintain or treat a physical or mental condition of a person; or
- (b) withdrawing or withholding a matter mentioned in paragraph (a) (including withdrawing or withholding life-sustaining measures);

“**interested person**” means —

- (a) a directive-maker, to the extent that the directive-maker is able to express the directive-maker’s wishes;
- (b) a proxy of the directive-maker;
- (c) a registered practitioner providing, or proposing to provide, health care to the directive-maker;
- (d) the directive-maker’s nearest relative; or
- (e) any person who satisfies the Ethics Committee that that person has a proper interest in the issue;

“**life-sustaining measures**” means health care intended to sustain or prolong life and that supplants or maintains the operation of vital bodily functions that are temporarily or permanently incapable of independent operation, including —

- (a) cardiopulmonary resuscitation;
 - (b) assisted ventilation; or
 - (c) artificial nutrition and hydration,
- but does not include a blood transfusion;

“**medical treatment**” means the provision by a doctor of physical, surgical or psychological therapy, including, for example, a doctor —

- (a) providing therapy to prevent disease, restore or replace bodily function in the face of disease or injury or to improve comfort and quality of life; and
- (b) prescribing or supplying medication;

“**mentally competent**”, in relation to a person, at a particular time, means that that person is conscious and, during the course of making that person’s decisions, has the faculties to be able to —

- (a) understand, retain and use relevant information being any information needed to make the decision and to understand its consequences, except for technical or trivial information;
- (b) understand the nature and effect of the decision; and
- (c) communicate the decision in some way;

“**mentally incompetent**”, in relation to a person, at a particular time, means that that person is unable to make a decision as that person does not possess the faculties to be able to —

- (a) understand, retain and use relevant information being any information needed to make the decision and to understand its consequences, except for technical or trivial information;
- (b) understand the nature and effect of the decision; and
- (c) communicate the decision in some way;

“**nearest relative**”, of a directive-maker, means the person most closely connected to the directive-maker, using the following order of relationships with the directive-maker, and, if there is more than one of any type, priority shall be given to the most senior in age of that type —

- (a) spouse;
- (b) children;
- (c) parents;
- (d) siblings;
- (e) grandparents;
- (f) grandchildren;
- (g) uncle or aunt;
- (h) nephew or niece;
- (i) cousin;
- (j) close friend;
- (k) the mental health professional treating the directive-maker;
- (l) a social worker or probation officer employed in that capacity in Government or a statutory body; or
- (m) attorney;

“**negligence**” includes not having regard, or sufficient regard, in the circumstances to the relevant provisions of this Law;

“**notice**” means a notice in writing;

“**proxy**” means a person appointed by a directive-maker to make decisions about that directive-maker’s health care;



“**proxy decision**” means a decision made by a proxy in relation to a directive-maker’s health care;

“**reasonably practicable**” means reasonably practicable in all the circumstances;

“**registered practitioner**” means an individual registered under the *Health Practice Law (2017 Revision)* to practice a profession mentioned in Schedules 4 to 7 of that Law;

“**revocation wish**” means a wish expressed by the directive-maker to revoke the directive at any time while the directive-maker was or is mentally competent;

“**spouse**”, of a directive-maker, means a person who is a legal resident and who is —

- (a) the legal husband or wife of that person; or
- (b) a person of the opposite sex who, although not legally married to that person, lives with that person in the same household under the same domestic arrangements as a legal husband or wife and has been so living with that person for a continuous period of five years,

and any reference in this Law to marriage or to a married person shall be construed, with the necessary changes being made, so as to give effect to paragraph (a) or (b), as the case may be; but where a person is judicially or otherwise separated from a legal spouse that person shall not be considered to have any other spouse except that legal spouse;

“**terminally ill**” means having an incurable condition caused by injury or disease from which there is no reasonable prospect of a permanent recovery and for which condition —

- (a) death would, within reasonable medical judgment, be imminent regardless of life-sustaining measures; and
- (b) life-sustaining measures would only serve to postpone death;

“**temporary order**” means an order under section 18;

“**wishes**” includes directions and instructions and wishes impliedly expressed, but does not include a wish that is a barred provision of a directive or would be a barred provision had the wish been included in a directive; and

“**witnessing doctor**” means a doctor chosen by a directive-maker to witness the execution of that directive-maker’s directive.

Palliative care unaffected

3. This Law shall not affect the functions of registered practitioners for the giving of palliative care or a person’s right to receive palliative care.

Law shall not authorize euthanasia

4. This Law shall not —
- (a) authorize euthanasia or assisted suicide; or
 - (b) affect Part VI of the *Penal Code*, except as provided for under sections 37 and 41.

PART 2 - PRINCIPLES OF ADVANCE HEALTH CARE DIRECTIVES

Advance health care directives principles

5. (1) This Part sets out the principles for the application of this Law in relation to making decisions and orders in respect of health care directives.
- (2) The requirements under the advance health care directive principles only apply so far as it is reasonably practicable.

Paramount principle: registered practitioners decide best interest

6. The paramount principle shall be that questions of what is in a person's best interest and what health care that person receives are ultimately up to that person's registered practitioner or practitioners to decide, except under the following —
- (a) the denial of health care, as expressed in an operative directive;
 - (b) a proxy decision to deny health care; and
 - (c) an order under this Law that health care is to be denied or any type of other order that has the same effect.

Principles for directives

7. The principles in respect of directives are —
- (a) this Law recognizes a validly made directive;
 - (b) a mentally competent adult may make a directive and, by directive decide what quality of life that adult wishes should that adult become mentally incompetent;
 - (c) an adult is, in the absence of evidence or a law to the contrary, presumed to be mentally competent to make decisions about that adult's own health care;
 - (d) an adult is to be —
 - (i) allowed to decide that adult's health care to the extent that that adult is able; and
 - (ii) supported in the making of any decisions for as long as reasonably practicable;



- (e) a mentally competent adult has the right to decide that adult's health care in any of (or in any combination of) the following ways according to that adult's background, culture, history, spiritual and religious beliefs —
 - (i) by making the decision on that adult's own free will;
 - (ii) by delegating the decision to another person; or
 - (iii) by making the decision collaboratively within that adult's family or community, or both;
- (f) if a directive-maker later becomes mentally incompetent, the directive has the same authority as if the directive-maker were mentally competent;
- (g) if a dispute arises, a directive-maker's wishes are paramount and are to be implemented; and
- (h) in deciding what a directive-maker's wishes are, the following may be considered —
 - (i) past wishes the directive-maker has expressed;
 - (ii) the directive-maker's values displayed or expressed during the directive maker's life; and
 - (iii) any other relevant matter.

Principles for proxies

8. The principles in respect of a proxy are —

- (a) if the directive-maker later becomes mentally incompetent, the proxy has the same authority as the directive-maker as if the directive-maker were mentally competent; and
- (b) proxy decisions —
 - (i) are to reflect the decision that the directive-maker would have made in the circumstances;
 - (ii) are, in the absence of specific instructions or expressed views by the directive-maker, to be consistent with what the proxy believes the directive-maker would have decided; and
 - (iii) cannot restrict the directive-maker's rights and freedoms under the Bill of Rights under Part I of the Constitution, in light of the state of the directive-maker's health and wishes under the directive.

PART 3 - ADVANCE HEALTH CARE DIRECTIVES

Validity of directive

9. An advance health care directive shall be valid if it complies with this Part and has not been revoked.

Capacity to make a directive

10. (1) Any adult who is mentally competent may make a directive, even though that adult is not terminally ill and not undergoing any health care.
- (2) A directive's validity shall not be affected if the directive-maker later becomes mentally incompetent.

Form of directive

11. (1) A directive shall be made by —
- (a) completion of the relevant parts of the form in the Schedule and following the instructions contained in the form (either by or on behalf of the directive-maker);
 - (b) the directive-maker signing the form personally in the presence of two adult witnesses; and
 - (c) both witnesses signing it.
- (2) A witness shall not be a person who has been appointed as a proxy under the directive.
- (3) At least one of the witnesses shall be a doctor witnessing in that capacity after having complied with section 12.
- (4) The witnessing doctor shall be chosen by the directive-maker.
- (5) A directive shall have no effect if, when the directive-maker signed the directive, either of the witnesses to the directive knew, or ought reasonably to have known, that that witness was a beneficiary of the directive-maker.
- (6) Where a witness to a directive, or that witness' spouse is a beneficiary of any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), that devise, legacy, estate, interest, gift or appointment shall be null and void.
- (7) In this section, "beneficiary", of a directive-maker, means someone who —
- (a) might benefit under the directive-maker's will or estate in intestacy or an insurance policy under which a life insured is, or includes, the directive-maker; or
 - (b) has an interest granted under an instrument under which the directive-maker is the donor, grantor or settlor.



Witnessing doctor's duty

12. (1) Before witnessing a directive a witnessing doctor shall take reasonable steps to be satisfied that the directive-maker —
- (a) is an adult who is mentally competent;
 - (b) is giving the directive voluntarily and without coercion, duress or inducement; and
 - (c) has been told about the directive's nature and consequences.
- (2) A doctor responsible for a person's health care may still witness a directive by that person even though the doctor conscientiously objects to later acting on it.
- (3) Where a witnessing doctor conscientiously objects to a directive, the witnessing doctor shall take reasonable steps to transfer the directive-maker's health care to another doctor.

Presumption of validity and declarations about validity

13. (1) In the absence of evidence to the contrary, a registered practitioner or proxy is entitled to presume that —
- (a) a document that purports to be a directive apparently made under this Part is valid;
 - (b) the directive-maker was an adult and mentally competent when the directive was made; and
 - (c) the witnessing doctor complied with section 12(1).
- (2) A directive is valid even though —
- (a) a part of the directive was not completed if the corresponding part in the form states that the part is optional;
 - (b) it does not appoint any proxy;
 - (c) the directive-maker —
 - (i) was not fully informed of all medical conditions, or other circumstances, to which the directive relates; or
 - (ii) did not seek legal or other professional advice about the directive;
 - (d) the directive has a minor error (including, for example, a misspelling or an obsolete reference) that does not affect a person's ability to understand the directive-maker's wishes under the directive;
 - (e) any or all of the following apply for wishes under the directive —
 - (i) the wish is expressed in informal language rather than medical or technical terminology;
 - (ii) the wish is expressed in general terms rather than as specific instructions;

- (iii) the wish needs to be inferred from their context or from other provisions of the directive; or
 - (iv) the wish is based solely on moral, religious or social grounds;
- (f) the directive does not contain, or has deleted, a note or checklist in the form in the Schedule; or
- (g) the directive's form is different from the form in the Schedule but its effect is the same, or substantially the same, as that under the form, including, because —
 - (i) of different formatting; or
 - (ii) the directive contains extra material or information consistent with this Law.
- (3) In the absence of an order under this Law or of evidence of revocation under this Part, a directive is taken to have not been revoked.

Ineffective directive provisions

14. (1) A provision of a directive wishing for any of the following shall be of no effect and the directive shall be read as if the directive did not so wish —
- (a) something unlawful, including, euthanasia or assisted suicide;
 - (b) something that would cause a registered practitioner to contravene a professional standard or code of conduct (however described);
 - (c) a refusal of mental health treatment; or
 - (d) anything else prescribed under Regulations.
- (2) In this section —
- “mental health treatment” means medical treatment under an order under the Mental Health Law, 2013 or detention permitted under that Law; and
- “professional standard or code of conduct” does not include a standard or code of conduct prepared by or on behalf of a hospital, clinic, hospice, nursing home or another place at which health care is provided that regulates the provision of health care or other services at that place.

Operative directive

15. (1) A directive operates only while the directive-maker is mentally incompetent.
- (2) A directive shall cease to operate on the occasion of the following —
- (a) if the directive is revoked pursuant to this Law;
 - (b) if the directive states an expiry day, on that day; or
 - (c) if the directive-maker dies.
- (3) A directive that is in operation under subsection (1) is an “operative” directive.



Directive prevails over attorney and nearest relative

16. While a directive is operative, it prevails over any right of an attorney of the directive-maker or of the directive-maker's nearest relative.

Revocation

17. (1) A directive-maker who is mentally competent may revoke the directive in writing and that revocation shall be signed and dated.
- (2) The writing need not refer to the revoked directive's date.
- (3) The directive-maker shall take reasonable steps to tell the following persons about the revocation —
- (a) any proxy appointed under the revoked directive;
 - (b) any other person who the directive-maker has given a copy of the directive; and
 - (c) if the witnessing doctor for the directive is on the Islands, the witnessing doctor.
- (4) A contravention of subsection (3) does not affect the revocation's validity.
- (5) The making of a subsequent directive revokes any earlier directive made by the same directive-maker.

Temporary order

18. (1) A registered practitioner or any other person shall, if —
- (a) a directive is operative and the directive-maker is receiving health care at or from a hospital; and
 - (b) that registered practitioner or person becomes aware that the directive-maker expressed a wish to revoke the directive at any time while the directive-maker was or is mentally competent,
- notify the Ethics Committee about the wish to revoke.
- (2) The Ethics Committee may, on being notified, make any temporary order it thinks fit until it has an opportunity to decide the matter under section 20, including, for example, that no registered practitioner can act on the directive until the decision has been made.
- (3) The temporary order expires on the making of the decision.

Offence: contravening temporary order

19. (1) A registered practitioner who, without reasonable excuse, contravenes a temporary order commits an offence and is liable to a fine of twenty thousand dollars or to imprisonment for a term of one year, or both.
- (2) In a proceeding for an offence against subsection (1), it is a defence for the defendant to prove that the defendant did not know, and could not reasonably

have been expected to know, that the defendant's conduct amounted to the offence.

Revocation by Ethics Committee because of revocation wish

20. (1) If a hospital's Ethics Committee is notified of a revocation wish, the Ethics Committee may revoke the relevant directive if the Ethics Committee is satisfied that —
- (a) when the wish was expressed, the directive-maker understood the nature and consequences of revoking the directive;
 - (b) the revocation genuinely reflected the directive-maker's wishes at the time; and
 - (c) the revocation is appropriate in the circumstances.
- (2) Where a directive expressly provides that it cannot be revoked because of a change in the directive-maker's wishes, the Ethics Committee may only revoke the directive if the Ethics Committee is satisfied that the directive-maker's state of mind at the time the revocation wish was made, was a conscious wish to override that provision.

Revocation by Ethics Committee on request

21. (1) The Ethics Committee may, if —
- (a) a directive-maker is mentally incompetent and receiving health care at or from a hospital; and
 - (b) a person acting on the directive-makers behalf asks the Ethics Committee to revoke the directive,
- revoke the directive.
- (2) The Ethics Committee may only revoke the directive if the Ethics Committee is satisfied that —
- (a) acting on the directive would not be in the directive-maker's best interest; and
 - (b) assuming the following, medical advances since the making of the directive are likely to cause the directive-maker's health care wishes to be significantly different from those under the directive —
 - (i) that the directive-maker is mentally competent; and
 - (ii) that the directive-maker had been generally informed of the nature of the medical advances.
- (3) Revocation under subsection (1) may not depend on a revocation wish.
- (4) In considering the issue of causation in respect of subsection (2)(b), the Ethics Committee shall take into account any —



- (a) express provision in the directive that it cannot be revoked because of a change in the directive-maker's wishes;
- (b) wish not to revoke the directive expressed by the directive-maker before the directive-maker's mental incompetency; and
- (c) revocation wish by the directive-maker, or a wish by the directive-maker not to revoke.

How directive is to be acted on generally

22. (1) A registered practitioner who is providing, or is to provide, health care to a directive-maker and that directive-maker has a valid and operative directive shall —
- (a) comply with any provision of the directive wishing for the denial of particular health care or of any health care, including, for example, the following words in the directive —
 - (i) “do not resuscitate”; or
 - (ii) its acronym “DNR”;
 - (b) not comply with any provision of the directive which —
 - (i) is unlawful, including, euthanasia and assisted suicide;
 - (ii) would cause a registered practitioner to contravene a professional standard or code of conduct (however described);
 - (iii) would be a refusal of mental health treatment; or
 - (iv) is prohibited under this Law or Regulations; and
 - (c) as far as is reasonably practicable —
 - (i) seek to avoid any outcome or intervention that the directive-maker may have wished to avoid; and
 - (ii) endeavour to comply with the advance health care directive principles.
- (2) The registered practitioner shall, as far as is reasonably practicable, comply with other provisions of the directive relating to health care of the relevant type.

Exceptions to acting on directive

23. (1) Notwithstanding section 22, a registered practitioner may refuse to act on a directive if the practitioner —
- (a) reasonably believes the directive-maker did not intend the directive to apply in the particular circumstances; or
 - (b) reasonably believes the directive does not reflect the directive-maker's current wishes and the registered practitioner complies with section 18.

- (2) A registered practitioner may refuse to comply with a provision of a directive that specifies the type of health care the directive-maker wishes to receive if the provision —
 - (a) is not consistent with any relevant professional standards; or
 - (b) does not reflect the Islands' current health care standards.
- (3) Subsection (2) shall not apply to any provision of the directive, except a barred provision, that wishes for the denial of particular or of any health care.
- (4) A registered practitioner may refuse to comply with a provision of a directive on conscientious grounds.
- (5) Where a registered practitioner refuses to comply pursuant to subsection (4), the registered practitioner shall take reasonable steps to transfer the directive-maker's health care to another registered practitioner.

Directive acts as the directive-maker's consent

24. If a registered practitioner acts or proposes to act on an operative directive —
- (a) the directive-maker shall be taken to have consented to the health care provided by so acting, subject to section 25; and
 - (b) that consent has the same effect as if the directive-maker were mentally competent.

Withdrawal of directive-maker's consent to health care

25. (1) Where —
- (a) the directive-maker has expressed, or expresses, a wish to a registered practitioner to withdraw consent to the provision of particular health care, or health care of a particular type, under the directive; and
 - (b) the wish was or is expressed while the directive-maker is mentally competent,
- the registered practitioner shall treat the consent as withdrawn.
- (2) Notwithstanding subsection (1), the registered practitioner shall provide the health care if —
 - (a) the directive expressly provides that the consent cannot be withdrawn because of a change in the directive-maker's wishes; and
 - (b) the registered practitioner is not satisfied the directive-maker's current state of mind is a conscious wish to override that provision.
 - (3) Any act or omission that took place before the withdrawal shall be valid if it was done or made in the course of acting on the directive and done or made in good faith and without negligence.



Second opinion and dispute referral to Ethics Committee

26. (1) The directive-maker's nearest relative or proxy may, if the directive-maker's nearest relative or proxy disagrees with the doctor about the health care or proposed health care to be provided to the directive-maker, seek a second opinion from another doctor.
- (2) The medical director shall, if requested, assist the directive-maker's nearest relative or proxy to seek an appropriate second medical opinion on the matter from another doctor.
- (3) Where the directive-maker's nearest relative or proxy still disagrees with the doctor after obtaining the second opinion, the directive-maker's nearest relative or proxy may ask the hospital's Ethics Committee to make a decision on the matter.
- (4) In this section "medical director" means —
- (a) if the hospital is operated by the Health Services Authority under the *Health Services Authority Law (2018 Revision)*, the Medical Director of that Authority; or
- (b) for another hospital, the doctor with similar functions for the hospital as that of the Health Services Authority's Medical Director.

Offences concerning directives

27. (1) A person who knowingly makes a false or misleading statement in, or relating to, a directive commits an offence and is liable on summary conviction —
- (a) to, if the offence was committed when the person was a proxy appointed under the directive, a fine of twenty thousand dollars or to imprisonment for two years, or both; or
- (b) to a fine of ten thousand dollars.
- (2) A person who knowingly makes a false or misleading statement relating to an attempt to make a directive commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

PART 4 – HEALTH CARE PROXY**Appointment**

28. (1) A directive-maker may, in the same directive, appoint one or more persons to be that directive-maker's health care proxy.
- (2) The following persons shall not be appointed as a proxy —
- (a) a person who is not an adult;
- (b) a person who is mentally incompetent;

- (c) a registered practitioner who is responsible, solely or with others, for the directive-maker's health care; and
 - (d) any other person of a type prescribed under Regulations.
- (3) A person shall be a proxy only while that person's appointment is in force under this Part.
- (4) An appointment of two or more proxies shall be both joint and several.
- (5) A proxy's appointment only has force while the directive is operative.

Functions

29. (1) While a proxy's appointment is in force, the proxy may make decisions about the directive-maker's health care as if the directive-maker were mentally competent.
- (2) The following apply for proxy decisions —
- (a) they are exercisable during all periods during which the directive-maker is mentally incompetent, and not otherwise;
 - (b) they are subject to the directive's provisions;
 - (c) they cannot be made about matters that are not about health care;
 - (d) they prevail over the rights of the directive-maker's attorney or nearest relative;
 - (e) they cannot refuse palliative care to the directive-maker; and
 - (f) they can only instruct the refusal of artificial nutrition and hydration to the directive-maker if —
 - (i) the directive-maker is terminally ill; and
 - (ii) the directive provides that the directive-maker does not wish to undergo life-sustaining measures.
- (3) A proxy decision is of no effect to the extent that it contravenes subsection (2).

Exercise of functions

30. (1) A proxy can only make a proxy decision if the proxy —
- (a) remains eligible for appointment under section 28; and
 - (b) is not prevented under this or another Law from acting under the directive.
- (2) If a proxy asks a registered practitioner to deny health care and the registered practitioner has not already seen the directive, the registered practitioner shall ask the proxy to produce it before complying with the proxy's request.
- (3) The directive may be produced by giving a hard copy of a certified copy of the directive or, under Part II of the *Electronic Transactions Law (2003 Revision)*, sending an electronic record of a certified copy of the directive.



- (4) Until the directive is so produced, the registered practitioner may continue to provide the directive-maker with the health care that the practitioner would have provided had the directive-maker not made a directive.

Criteria for exercise of functions

- 31.** (1) In making a proxy decision, a proxy is to —
- (a) as far as is reasonably practicable —
 - (i) give effect to the wishes under the directive;
 - (ii) seek to avoid an outcome or intervention that the directive-maker would have wished to avoid;
 - (iii) to the extent the directive is silent about the directive-maker's wishes on a matter, find out and have regard to, the directive-maker's wishes expressed outside the directive while the directive-maker was mentally competent; and
 - (iv) give effect to the advance health care directive principles to the extent the advance health care directive principles are relevant to the decision;
 - (b) give effect to the decision that the proxy considers the directive-maker would have made in the circumstances had the directive-maker been mentally competent at the time; and
 - (c) act expeditiously and in good faith.

Notice of proxy decision

- 32.** If there are two or more proxies for the same directive-maker and a proxy makes a proxy decision alone, that proxy shall take reasonable steps to give notice of the decision to all of the other proxies and the directive-maker's nearest relative.

Proxy's confidentiality duty

- 33.** (1) A proxy shall keep details of the directive-maker's health care, any advice obtained and the making of proxy decisions confidential.
- (2) Subsection (1) shall not apply to a disclosure by a proxy —
- (a) to a registered practitioner who needs to be told about the decisions;
 - (b) to the directive-maker's nearest relative; or
 - (c) required by law or under a Court order.

Renouncement

- 34.** (1) A proxy may renounce that proxy's appointment by notice —
- (a) to the directive-maker; or
 - (b) if the directive-maker is mentally incompetent, to the doctor responsible for treating the directive-maker.

- (2) Where more than one proxy was appointed the renouncing proxy shall also give the notice to the other proxies.

Effect of proxy's death or renouncement

35. (1) A proxy's death or the renouncement of a proxy's appointment shall not affect —
- (a) the directive's validity; and
 - (b) if there were other proxies for the same directive-maker, the other proxies' powers.
- (2) Where, the proxy who died or renounced was the only proxy appointed and the directive-maker is mentally incompetent, the doctor responsible for treating the directive-maker may continue to provide the health care to the directive-maker that the doctor considers is in the directive-maker's best interest and is consistent with the directive.

PART 5 - PROTECTIONS FOR PROXY AND REGISTERED PRACTITIONERS

Immunity: doctor's decisions

36. (1) Where a doctor makes a decision in respect of —
- (a) whether or not an adult is mentally competent or suffering from a terminal illness;
 - (b) whether or not a directive-maker has revoked, or intended to revoke, the directive; or
 - (c) whether or not a directive is valid,
- if that decision was made in good faith and without negligence that doctor shall not be criminally or civilly liable for making the decision.
- (2) If the decision was made by an HSA doctor, the decision is taken to have been made in performing the doctor's functions for that employment and section 54 of the *Public Authorities Law, 2017* shall apply.
- (3) In this section, "HSA doctor" means a doctor employed by the Cayman Islands Health Services Authority established under section 3 of the *Health Services Authority Law (2018 Revision)*.

Immunity: acting on a directive

37. (1) Where acting on an operative directive —
- (a) a doctor;
 - (b) another registered practitioner acting on a doctor's instructions; or



- (c) a proxy,
does an act in good faith, without negligence and in compliance or purported compliance with a directive, that doctor, registered practitioner or proxy shall not be criminally or civilly liable for that act.
- (2) Subsection (1) includes acting on a revoked directive or a directive that the directive-maker intended to revoke if the doctor, registered practitioner or proxy did not know of the revocation or intended revocation.
- (3) Subsection (2) shall apply notwithstanding the following sections of the *Penal Code (2019 Revision)* —
 - (a) 188(d) (causing death defined);
 - (b) 191 (responsibility of person who has charge of another); and
 - (c) 211 (other negligent acts causing harm).

Registered practitioners not compellable to provide positive health care

38. (1) A registered practitioner shall not be required to provide any particular type of health care to a person other than the denial of that health care under a directive, order or decision.
- (2) The directive, order or decision shall be of no effect to the extent that the directive, order or decision contravenes subsection (1).
- (3) Subsection (2) shall not prevent the directive-maker's wishes in the directive from being taken into account.

Immunity: communicating revocation wish

39. A registered practitioner or proxy shall not be criminally or civilly liable for communicating to an Ethics Committee about a revocation wish if that registered practitioner or proxy did so in good faith.

Immunity: proxy decisions in good faith

40. A proxy shall not be criminally or civilly liable for making a proxy decision in contravention of section 32 if the decision was made in good faith.

Brainstem death cases

41. (1) If a person has been certified as brainstem dead, a doctor may withdraw all life-sustaining measures from the deceased.
- (2) In making the certification of brainstem death, due regard shall be given to any relevant codes of practice about the diagnosis and certification of death of the United Kingdom or the Islands.
- (3) Subsection (1) shall apply notwithstanding any directive of the deceased to the contrary.

- (4) The withdrawal of life-sustaining measures shall not constitute causation of death under section 188 (causing death defined) of the *Penal Code (2019 Revision)*.

PART 6 - ETHICS COMMITTEES

Requirement for hospitals to have an Ethics Committee

42. (1) Each hospital shall have an Ethics Committee to perform functions under this Law for its patients.
- (2) A hospital may establish its own Ethics Committee or designate another hospital's Ethics Committee to be its Ethics Committee.
- (3) If no Ethics Committee has been designated, the Ethics Committee of the Cayman Islands Hospital shall be taken to have been designated.

Membership

43. An Ethics Committee shall consist of —
- (a) two doctors;
 - (b) a social worker;
 - (c) an attorney-at-law or ethicist;
 - (d) a mental health practitioner being either a community psychiatric nurse, psychologist or psychiatrist;
 - (e) a registered nurse;
 - (f) a faith based person; and
 - (g) a lay person.

General power to regulate own procedures

44. (1) Subject to section 45, an Ethics Committee may regulate its own procedures for deciding issues that come before it under Part 2.
- (2) The Ethics Committee shall ensure that all decisions are made as expeditiously as possible, having regard to —
- (a) the relevant directive-maker's best interest; and
 - (b) the duty of public officials under section 19 of the Constitution.

Procedural fairness requirements

45. (1) This section applies for issues about which an Ethics Committee may make decisions under this Law except a decision to make a temporary order.
- (2) An Ethics Committee shall allow an interested person an opportunity to be heard on an issue before it makes a decision on the issue. —



- (3) Subsection (2) shall not apply in relation to a nearest relative if —
 - (a) after having made reasonable endeavours to locate that nearest relative, the Ethics Committee is unaware of that nearest relative's whereabouts; or
 - (b) all of the following apply —
 - (i) that nearest relative is not in the Islands;
 - (ii) it is not practicable to communicate with that nearest relative electronically; and
 - (iii) the Ethics Committee considers that delaying its decision is not in the relevant directive-maker's best interest.
- (4) An Ethics Committee may, but need not, conduct enquiries and act on any information or opinion it has, forms or obtains about an issue.
- (5) An Ethics Committee may only rely on the information or opinion if it has given all interested persons an opportunity to respond to the information or opinion.
- (6) In deciding the nature and extent of the opportunity required under this section, an Ethics Committee may take into account the directive-maker's best interest and the need to decide the issue expeditiously.

Form of decision and notice of right to appeal

46. (1) An Ethics Committee's decision on an issue that comes before it shall be by way of an order.
- (2) The order may be made orally if doing so is in the relevant directive-maker's best interest.
 - (3) As soon as practicable after making the order (whether oral or written), the Ethics Committee shall —
 - (a) tell, or give notice to, each interested person whom it heard in coming to the decision (except only as a witness) —
 - (i) about the order; and
 - (ii) that the interested person may, within three days, appeal to the Court against the decision; and
 - (b) if the order was oral, do the following as soon as practicable —
 - (i) reduce to writing the order and the Ethics Committee's reasons for making the decision; and
 - (ii) give each interested person told of the order a copy of the order and reasons, and a notice stating that the interested person has a right to appeal.

Appeal

47. An interested person may, within three days after being told of, notified of or entitled to be told of or given notice of an Ethics Committee's order, appeal to the Court against the decision.

Hearing and decision on appeal

48. (1) The Court shall decide the appeal as expeditiously as possible, taking into account the relevant directive-maker's best interest.
- (2) After hearing the appeal, the Court may —
- (a) affirm, set aside or vary the decision appealed against; or
 - (b) set aside the decision and remit the matter to the relevant Ethics Committee for the Ethics Committee to reconsider with any directions the Court considers fit.
- (3) If the Court's decision is other than to remit, that decision is taken to have been the Ethics Committee's decision.

PART 7 - MISCELLANEOUS**Grand Court's general jurisdiction for Law**

49. (1) The Court has jurisdiction for matters arising in relation to this Law, including whether —
- (a) an adult is mentally competent; and
 - (b) a directive or a proxy's appointment is valid.
- (2) Where this Law permits a matter to be brought before an Ethics Committee, subsection (1) shall only allow a person to bring the matter before the Court (other than by an appeal) if the Court considers there are exceptional circumstances.
- (3) In exercising the jurisdiction, the Court may make an order, give directions or grant any other relief it thinks fit.

Recognition of similar directives and proxies from certain jurisdictions

50. (1) The following instruments, by whatever name called, having been made under a law of a jurisdiction listed in subsection (2) shall be recognized in the Islands —
- (a) documents that have, or include, similar functions to that of a directive (each a "recognised directive"); and
 - (b) written appointments similar to, or that include, the appointment of a person (whatever called) to perform functions that are similar to, or



include, a proxy's functions under this Law (each a "recognised appointment").

- (2) The list of the jurisdictions is —
 - (a) the United Kingdom;
 - (b) Australia;
 - (c) Canada;
 - (d) South Africa;
 - (e) New Zealand;
 - (f) Jamaica;
 - (g) the United States of America; and
 - (h) a jurisdiction that is a member State of the European Union under the Treaty on European Union signed in Maastricht on 7th February, 1992.
- (3) The Cabinet may, by Order, amend subsection (2).
- (4) The following shall apply for persons in the Islands —
 - (a) a recognised directive that has not been revoked under the laws of the relevant jurisdiction has effect as if it had been made under this Law;
 - (b) a recognised appointment that has not been revoked under the laws of the relevant jurisdiction has effect as if it had been made under this Law;
 - (c) the functions of registered practitioners and proxies concerning a recognised directive or appointment are those under this Law and not the laws of the jurisdiction under which the directive or appointment was made; and
 - (d) a provision of a recognised directive is of no effect to the extent that the provision —
 - (i) requires a registered practitioner to provide a person with any particular type of health care, except the denial under the directive of particular health care or of any health care; or
 - (ii) is a barred provision.
- (5) Subsection (4) applies despite the other jurisdiction's laws and the provisions of the recognised directive or appointment.
- (6) Subsections (4)(d) and (5) do not apply for a law of England to the extent it applies to the Islands.
- (7) In this section, "jurisdiction" includes a Province, State or another governmental body with legislative functions within a jurisdiction.

Effect of contraventions not being an offence

51. If a provision of this Law imposes an obligation but does not state that a contravention of the obligation is an offence, a person who contravenes the obligation can still be civilly liable for the contravention if any such liability exists outside this Law.

Cabinet's power to amend Schedule

52. The Cabinet may, by Order, amend the Schedule.

Regulations

53. The Cabinet may make Regulations about —
- (a) matters permitted under this Law to be prescribed by Regulations;
 - (b) codes of practice about directives and proxies; and
 - (c) matters that are necessary or convenient to give effect to the advance health care directives principles.



SCHEDULE

(Sections 11(1)(a), 13(2) and 52)

COMBINED FORM OF ADVANCE HEALTH CARE DIRECTIVE AND PROXY APPOINTMENT**Cayman Island Advance Health Care Directive:
Planning for future health care decisions**

The Health Care Decisions Law, 2019

By: _____ **Date of Birth:** _____
(Print Name) (Month/Day/Year)

This directive has two parts to state your wishes, and a third part for needed signatures.

Part 1 lets you answer this question: If you cannot (or do not want to) make your own health care decisions, who do you want to make them for you? The person you pick is called your proxy. More than one proxy can be appointed, in which case Part 1 will need to be expanded. Under the Law, proxies may act separately. **Make sure you talk to your proxy about this important role.**

Part 2 lets you write your preferences about efforts to extend your life in three (3) situations: terminal condition, persistent vegetative state, and end-stage condition.

Use the directive to reflect your wishes, then sign in front of two witnesses one of which shall be a doctor (Part 3). If your wishes change, make a new directive.

Make sure you give a copy of the completed directive to your proxy, your doctor, and others who might need it. Keep a copy at home in a place where someone can get it if needed. Review what you have written periodically.

Note: Marriage or divorce does not automatically revoke an advance health care directive. If you later marry or divorce you should review this directive and any proxy/ies appointed to see if this directive still agrees with your wishes.

Note: While a directive is operative, it prevails over any right of an attorney of the directive-maker or of the directive-maker's nearest relative.

Part 1: Appointment of proxy

(Optional; directive valid if no proxy appointed)

A. Appointment

Note: To be eligible for appointment, an individual must be an adult, mentally competent and not your doctor or other registered practitioner.

I appoint the following individual/s as my proxy/ies to make health care decisions for me:

Name:

Address:

Date of Birth:

Telephone Home:
numbers: Cell:

(Optional for Additional Proxy. Directive Valid if left blank.)

Name:

Address:

Date of Birth:

Telephone Home:
numbers: Cell:

B. Powers and rights of proxy.

- Note:*
- 1. These powers and rights will only apply while you are not mentally competent.*
 - 2. These powers and rights are optional. Strike out and initial any that you do not wish to apply.*
 - 3. If nothing is provided for here, the default position is that your proxy will (subject to certain limitations) have full power to make decisions about your health care during any period in which you are not mentally competent.*

I want my proxy to have full power to make health care decisions for me, including the power to:



1. consent or not to consent to medical procedures and treatments which my doctors offer, including things that are intended to keep me alive, for example CPR/cardiopulmonary resuscitation, ventilators and feeding tubes;
2. decide who my doctor and other health care providers should be;
3. decide where I should be treated, including whether I should be in a hospital, nursing home, other medical care facility or hospice programme.

I also want my proxy to:

1. ride with me, if possible, in an ambulance if ever I need to be rushed to the hospital; and
2. be able to visit me, with the same access rights as my nearest relative, if I am in a hospital or any other health care facility.

This power is subject to the following conditions or limitations:

(Optional; Directive valid if left blank.)

--

C. How my proxy is to decide specific issues

I trust my proxy's judgment. My proxy should look first to see if there is anything in Part 2 of this directive that may help to decide the issue. Then, my proxy should think about the conversations we have had, my religious and other beliefs and values, my personality, and how I handled medical and other important issues in the past. If what I would decide is still unclear, then my proxy is to make decisions for me that my proxy believes are in my best interest. In doing so, my proxy should consider the benefits, burdens, and risks of the choices presented by my doctors.

D. People my proxy should consult

(Optional; Directive valid if left blank.)

In making important decisions on my behalf, I encourage my proxy to consult with the following people. By filling this in, I do not intend to limit the number of people with whom my proxy might want to consult or my proxy's power to make decisions.

Name	Telephone Number

E. In Case of Pregnancy

(Optional for women of child-bearing years only; Directive valid if left blank.)

--

F. Access to my health information

1. If, before my proxy has power to act, my doctor wants to discuss with that person my capacity to make my own health care decisions, I authorize my doctor to disclose protected health information relating to that issue.
2. Once my proxy has power to act, my proxy may request, receive, and review any information, oral or written, regarding my physical or mental health, including medical and hospital records and other protected health information, and consent to disclosure of this information.



3. For all purposes relating to my health care, my proxy is my personal agent during any period in which I am not mentally competent.

Part 2: Treatment preferences

A. Statement of Goals and Values

(Optional; Directive valid if left blank.)

Note: Giving a directive does not affect you receiving palliative care.

I want to say something about my goals and values, and especially what is

most important to me during the last part of my life


B. Preference in Case of Terminal Condition

Note: If you want to state what your preference is, initial one only. If you do not want to state a preference here, cross through the whole section. Directive valid if left blank.

If my doctors certify that my death from a terminal condition is imminent, even if life-sustaining measures are used:

1. Keep me comfortable, which includes medication to relieve pain and distress, and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

>>OR<<

 _____

2. Keep me comfortable, which includes medication to relieve pain and distress, and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

>>OR<<

 _____

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.

 _____

C. Preference in Case of Persistent Vegetative State

*Note: If you want to state what your preference is, initial **one** only. If you do not want to state a preference here, cross through the whole section. Directive valid if left blank.*

If my doctors certify that I am in a persistent vegetative state, that is, if I am not conscious and am not aware of myself or my environment or able to interact with others, and there is no reasonable expectation that I will ever regain consciousness:

1. Keep me comfortable, which includes medication to relieve pain and distress, and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

>>OR<<

 _____

2. Keep me comfortable, which includes medication to relieve pain and distress, and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

>>OR<<

 _____

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.

 _____

D. Preference in Case of End-Stage Condition


*Note: If you want to state what your preference is, initial **one** only. If you do not want to state a preference here, cross through the whole section. Directive valid if left blank.*



If my doctors certify that I am in an end-stage condition, that is, an incurable condition that will continue in its course until death and that has already resulted in loss of mental capacity and complete physical dependency:

1. Keep me comfortable, which includes medication to relieve pain and distress and allow natural death to occur. I do not want any medical interventions used to try to extend my life. I do not want to receive nutrition and fluids by tube or other medical means.

>>**OR**<<


 _____

2. Keep me comfortable, which includes medication to relieve pain and distress, and allow natural death to occur. I do not want medical interventions used to try to extend my life. If I am unable to take enough nourishment by mouth, however, I want to receive nutrition and fluids by tube or other medical means.

>>**OR**<<

 _____

3. Try to extend my life for as long as possible, using all available interventions that in reasonable medical judgment would prevent or delay my death. If I am unable to take enough nourishment by mouth, I want to receive nutrition and fluids by tube or other medical means.

 _____

E. In Case of Pregnancy

(Optional, for women of child-bearing years only. Directive valid if left blank.)

If I am pregnant, my decision concerning life-sustaining procedures shall be modified as follows:

F. Effect of Stated Preferences

*Note: Read both of these statements carefully. Then, initial **one** only. Directive valid if left blank.*


1. I realize I cannot foresee everything that might happen after I can no longer decide for myself. My stated preferences are meant to guide whoever is making decisions on my behalf and my health care providers, but I authorize them to be flexible in applying these statements if they feel that doing so would be in my best interest.

>>**OR**<<

 _____

2. I realize I cannot foresee everything that might happen after I can no longer decide for myself. Still, I want whoever is making decisions on my behalf and

my health care providers to follow my stated preferences exactly as written, even if they think that some alternative is better.

 _____

Part 3: Signature and witnesses

By signing below, I indicate that I am mentally competent to make this directive and that I understand its purpose and effect. I also understand that this document replaces any similar advance health care directive I may have completed before this date. I declare that this directive is made voluntarily and without coercion, duress or inducement.

Signature of Directive-Maker

Date

Witnessing doctor's statement:

The directive-maker signed this document in my presence. I am satisfied that:

- (a) the directive-maker is an adult who is mentally competent;
- (b) this directive was given voluntarily and without coercion, duress or inducement; and
- (c) the directive-maker has been told about the nature and consequences of making this directive.

Signature of Witnessing Doctor

Date

Doctor's name in print: _____

Doctor's registration number: _____

Signature of the other witness:

The directive-maker signed this document in my presence:*

Signature of Witness

Date

Witness' name in print: _____

**Note: Certain people cannot be a witness. Anyone appointed under Part 1 of this directive as a proxy and anyone who is a beneficiary - that is a person who*



might benefit under the directive-maker's will or estate in intestacy or an insurance policy under which a life insured is, or includes, the directive-maker; or has an interest granted under an instrument under which the directive-maker is the donor, grantor or settlor - of the directive-maker are not eligible.

CHECKLIST

Did you remember to:

- ☐ Fill out Part 1 if you want to name a proxy (or proxies)?
- ☐ Talk to your proxy about your values and priorities, and decide whether that's enough guidance or whether you also want to make specific health care decisions in your directive?
- ☐ If you want to make specific decisions, fill out Part 2, choosing carefully among alternatives?
- ☐ Sign and date the directive in Part 3, in front of a witnessing doctor and another independent witness?
- ☐ Did the witnessing doctor and the other witness also sign the directive just after you did?
- ☐ Make sure your proxy (if you named one), your family, and your doctor know about your advance health care planning
- ☐ Give a copy of your directive to your:
 - ☐ Proxy
 - ☐ Family members
 - ☐ Doctors



- ☐ Hospital
- ☐ Nursing Home (if applicable)

Passed by the Legislative Assembly the 10th day of April, 2019.

Hon. W. McKeeva Bush
Speaker

Zena Merren Chin
Clerk of the Legislative Assembly

