

ASSEMBLY BILL NO. 299—ASSEMBLYWOMAN BACKUS

MARCH 18, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing certain powers of attorney. (BDR 13-691)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to powers of attorney; defining the term “nondurable” for certain purposes relating to powers of attorney; revising provisions relating to powers of attorney for certain financial matters and health care; revising provisions relating to the Nevada Lockbox; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law sets forth the Uniform Power of Attorney Act which authorizes a person to grant authority to an agent to act for the person in certain matters relating to financial decisions. (NRS 162A.200-162A.660) Existing law also sets forth provisions governing durable powers of attorney for health care decisions. (NRS 162A.700-162A.865) Existing law provides that “durable” means a power of attorney is not terminated by the incapacity of a principal. (NRS 162A.040) Additionally, existing law sets forth the circumstances under which a guardian may be appointed after a power of attorney has been executed. (NRS 162A.250, 162A.800)

Section 1 of this bill defines the term “nondurable” as a power of attorney that terminates upon the incapacity of a principal. **Section 2.5** of this bill revises the term “incapacity” to provide that such incapacity must be determined by a court of competent jurisdiction or, if an instrument executed pursuant to chapter 162A of NRS specifically provides a different method for determining incapacity, by the method set forth in that instrument. **Sections 3 and 4** of this bill set forth the circumstances under which a guardian is appointed after the proper execution of a: (1) durable power of attorney for both financial matters and health care; and (2) nondurable power of attorney for both financial matters and health care.

Existing law establishes provisions relating to the Nevada Lockbox, which is a registry authorized to be established and maintained on the Secretary of State’s Internet website in which a person may register a will or certain other documents. (NRS 225.300-225.440) Existing law specifically provides a form for a power of attorney for health care. (NRS 162A.860) **Section 5** of this bill revises the form by



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informing the principal that the principal may request a power of attorney for health care be electronically stored in the Nevada Lockbox to allow access by authorized providers of health care. **Section 5** also provides additional desires specific to possible health care decisions.

Section 7 of this bill provides that a durable power of attorney for health care, executed pursuant to existing law, constitutes a valid declaration governing the withholding or withdrawal of life-sustaining treatment.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 162A of NRS is hereby amended by adding thereto a new section to read as follows:

“Nondurable,” with respect to a power of attorney, means terminated by the principal’s incapacity.

Sec. 2. NRS 162A.010 is hereby amended to read as follows:

162A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 162A.020 to 162A.160, inclusive, *and section 1 of this act* have the meanings ascribed to them in those sections.

Sec. 2.5. NRS 162A.070 is hereby amended to read as follows:

162A.070 “Incapacity” means the inability of an individual to manage property or business affairs because the individual:

1. Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or

2. Is:

(a) Missing;

(b) Detained, including incarcerated in a penal system; or

(c) Outside the United States and unable to return H,

↪ as determined by a court of competent jurisdiction or, if an instrument executed pursuant to this chapter specifically provides a different method for determining the incapacity of an individual for the purposes of this chapter, as determined by the method set forth in that instrument.

Sec. 3. NRS 162A.250 is hereby amended to read as follows:

162A.250 1. In a power of attorney, a principal may nominate a guardian of the principal’s estate for consideration by the court if guardianship proceedings for the principal’s estate or person are begun after the principal executes the power of attorney.



2. If, after a principal *properly* executes a *nondurable* power of attorney ~~[]~~ *pursuant to NRS 162A.220*, a court appoints a guardian of the principal's estate, the *nondurable* power of attorney is terminated. ~~[, unless the]~~

3. If, after a principal properly executes a durable power of attorney pursuant to NRS 162A.220, a court appoints a guardian of the principal's estate, the durable power of attorney is suspended and the agent's authority is not exercisable unless the court orders the termination of the guardianship, and the power of attorney has not otherwise been terminated pursuant to NRS 162A.270. Upon the court ordering such a termination of the guardianship, the durable power of attorney is effective and no longer suspended pursuant to this subsection and the agent's authority is exercisable.

4. Except as otherwise provided in subsection 3, the court ~~[allows]~~ *may issue an order allowing* the agent to retain specific powers conferred by the power of attorney. In the event the court allows the agent to retain specific powers, the agent shall file an accounting with the court and the guardian on a quarterly basis or such other period as the court may designate.

Sec. 4. NRS 162A.800 is hereby amended to read as follows:

162A.800 1. In a power of attorney for health care, a principal may nominate a guardian of the principal's person for consideration by the court if guardianship proceedings for the principal's person are begun after the principal executes the power of attorney.

2. If, after a principal *properly* executes a *nondurable* power of attorney for health care ~~[]~~ *pursuant to NRS 162A.790*, a court appoints a guardian of the principal's person, the *nondurable* power of attorney is terminated. The guardian shall follow any provisions contained in the *nondurable* power of attorney for health care delineating the principal's wishes for medical and end-of-life care.

3. If, after a principal properly executes a durable power of attorney for health care pursuant to NRS 162A.790, a court appoints a guardian of the principal's person, the durable power of attorney for health care is suspended and the agent's authority is not exercisable unless the court orders the termination of the guardianship, and the power of attorney has not otherwise been terminated pursuant to NRS 162A.270. Upon the court ordering such a termination of the guardianship, the durable power of attorney for health care is effective and no longer suspended pursuant to this subsection and the agent's authority is exercisable.



Sec. 5. NRS 162A.860 is hereby amended to read as follows:
162A.860 Except as otherwise provided in NRS 162A.865, the form of a power of attorney for health care may be substantially in the following form, and must be witnessed or executed in the same manner as the following form:

**DURABLE POWER OF ATTORNEY
FOR HEALTH CARE DECISIONS**

WARNING TO PERSON EXECUTING THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT. IT CREATES A DURABLE POWER OF ATTORNEY FOR HEALTH CARE. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

1. THIS DOCUMENT GIVES THE PERSON YOU DESIGNATE AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENT OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU MAY INCLUDE CONSENT, REFUSAL OF CONSENT OR WITHDRAWAL OF CONSENT TO ANY CARE, TREATMENT, SERVICE OR PROCEDURE TO MAINTAIN, DIAGNOSE OR TREAT A PHYSICAL OR MENTAL CONDITION. YOU MAY STATE IN THIS DOCUMENT ANY TYPES OF TREATMENT OR PLACEMENTS THAT YOU DO NOT DESIRE.

2. THE PERSON YOU DESIGNATE IN THIS DOCUMENT HAS A DUTY TO ACT CONSISTENT WITH YOUR DESIRES AS STATED IN THIS DOCUMENT OR OTHERWISE MADE KNOWN OR, IF YOUR DESIRES ARE UNKNOWN, TO ACT IN YOUR BEST INTERESTS.

3. EXCEPT AS YOU OTHERWISE SPECIFY IN THIS DOCUMENT, THE POWER OF THE PERSON YOU DESIGNATE TO MAKE HEALTH CARE DECISIONS FOR YOU MAY INCLUDE THE POWER TO CONSENT TO YOUR DOCTOR NOT GIVING TREATMENT OR STOPPING TREATMENT WHICH WOULD KEEP YOU ALIVE.

4. UNLESS YOU SPECIFY A SHORTER PERIOD IN THIS DOCUMENT, THIS POWER WILL EXIST



INDEFINITELY FROM THE DATE YOU EXECUTE THIS DOCUMENT AND, IF YOU ARE UNABLE TO MAKE HEALTH CARE DECISIONS FOR YOURSELF, THIS POWER WILL CONTINUE TO EXIST UNTIL THE TIME WHEN YOU BECOME ABLE TO MAKE HEALTH CARE DECISIONS FOR YOURSELF.

5. 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 IF YOU OBJECT.

6. YOU HAVE THE RIGHT TO REVOKE THE APPOINTMENT OF THE PERSON DESIGNATED IN THIS DOCUMENT TO MAKE HEALTH CARE DECISIONS FOR YOU BY NOTIFYING THAT PERSON OF THE REVOCATION ORALLY OR IN WRITING.

7. YOU HAVE THE RIGHT TO REVOKE THE AUTHORITY GRANTED TO THE PERSON DESIGNATED IN THIS DOCUMENT TO MAKE HEALTH CARE DECISIONS FOR YOU BY NOTIFYING THE TREATING PHYSICIAN, HOSPITAL OR OTHER PROVIDER OF HEALTH CARE ORALLY OR IN WRITING.

8. THE PERSON DESIGNATED IN THIS DOCUMENT TO MAKE HEALTH CARE DECISIONS FOR YOU HAS THE RIGHT TO EXAMINE YOUR MEDICAL RECORDS AND TO CONSENT TO THEIR DISCLOSURE UNLESS YOU LIMIT THIS RIGHT IN THIS DOCUMENT.

9. THIS DOCUMENT REVOKES ANY PRIOR DURABLE POWER OF ATTORNEY FOR HEALTH CARE.

10. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

11. YOU MAY REQUEST THAT THE NEVADA SECRETARY OF STATE ELECTRONICALLY STORE WITH THE NEVADA LOCKBOX A COPY OF THIS DOCUMENT TO ALLOW ACCESS BY AN AUTHORIZED PROVIDER OF HEALTH CARE AS DEFINED IN NRS 629.031.



1. DESIGNATION OF HEALTH CARE AGENT.

I,
(insert your name) do hereby designate and appoint:

Name:

Address:

Telephone Number:

as my agent to make health care decisions for me as authorized in this document.

(Insert the name and address of the person you wish to designate as your agent to make health care decisions for you. Unless the person is also your spouse, legal guardian or the person most closely related to you by blood, none of the following may be designated as your agent: (1) your treating provider of health care; (2) an employee of your treating provider of health care; (3) an operator of a health care facility; or (4) an employee of an operator of a health care facility.)

2. CREATION OF DURABLE POWER OF ATTORNEY FOR HEALTH CARE.

By this document I intend to create a durable power of attorney by appointing the person designated above to make health care decisions for me. This power of attorney shall not be affected by my subsequent incapacity.

3. GENERAL STATEMENT OF AUTHORITY GRANTED.

In the event that I am incapable of giving informed consent with respect to health care decisions, I hereby grant to the agent named above full power and authority: to make health care decisions for me before or after my death, including consent, refusal of consent or withdrawal of consent to any care, treatment, service or procedure to maintain, diagnose or treat a physical or mental condition; to request, review and receive any information, verbal or written, regarding my physical or mental health, including, without limitation, medical and hospital records; to execute on my behalf any releases or other documents that may be required to obtain medical care and/or medical and hospital records, EXCEPT any power to enter into any arbitration agreements or execute any arbitration clauses in connection with admission to any health care facility including any skilled nursing facility; and subject only to the limitations and special provisions, if any, set forth in paragraph 4 or 6.



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4. SPECIAL PROVISIONS AND LIMITATIONS.

(Your agent is not permitted to consent to any of the following: commitment to or placement in a mental health treatment facility, convulsive treatment, psychosurgery, sterilization or abortion. If there are any other types of treatment or placement that you do not want your agent's authority to give consent for or other restrictions you wish to place on his or her agent's authority, you should list them in the space below. If you do not write any limitations, your agent will have the broad powers to make health care decisions on your behalf which are set forth in paragraph 3, except to the extent that there are limits provided by law.)

In exercising the authority under this durable power of attorney for health care, the authority of my agent is subject to the following special provisions and limitations:

.....
.....
.....
.....

5. DURATION.

I understand that this power of attorney will exist indefinitely from the date I execute this document unless I establish a shorter time. If I am unable to make health care decisions for myself when this power of attorney expires, the authority I have granted my agent will continue to exist until the time when I become able to make health care decisions for myself.

(IF APPLICABLE)

I wish to have this power of attorney end on the following date:

6. STATEMENT OF DESIRES.

(With respect to decisions to withhold or withdraw life-sustaining treatment, your agent must make health care decisions that are consistent with your known desires. You can, but are not required to, indicate your desires below. If your desires are unknown, your agent has the duty to act in your best interests; and, under some circumstances, a judicial proceeding may be necessary so that a court can determine the health care decision that is in your best interests. If you wish to indicate your desires, you may INITIAL the statement or statements that reflect your desires and/or write your own statements in the space below.)



(If the statement
reflects your desires,
initial the box next to
the statement.)

1. I desire that my life be prolonged to the greatest extent possible, without regard to my condition, the chances I have for recovery or long-term survival, or the cost of the procedures.

[.....]

2. If I am in a coma which my doctors have reasonably concluded is irreversible, I desire that life-sustaining or prolonging treatments not be used. ~~[(Also should utilize provisions of NRS 449A.400 to 449A.481, inclusive, if this subparagraph is initialed.)]~~

[.....]

3. If I have an incurable or terminal condition or illness and no reasonable hope of long-term recovery or survival, I desire that life-sustaining or prolonging treatments not be used. ~~[(Also should utilize provisions of NRS 449A.400 to 449A.481, inclusive, if this subparagraph is initialed.)]~~

[.....]

4. Withholding or withdrawal of artificial nutrition and hydration may result in death by starvation or dehydration. I want to receive or continue receiving artificial nutrition and hydration by way of the gastrointestinal tract after all other treatment is withheld.

[.....]

5. I do not desire treatment to be provided and/or continued if the burdens of the treatment outweigh the expected benefits. My agent is to consider the relief of suffering, the preservation or restoration of functioning, and the quality as well as the extent of the possible extension of my life.

[.....]



6. *If I have an incurable or terminal condition, including late stage dementia, or illness and no reasonable hope of long-term recovery or survival, I desire my attending physician to administer any medication to alleviate suffering without regard that the medication is likely to cause addiction or reduce the extension of my life.* [.....]

(If you wish to change your answer, you may do so by drawing an “X” through the answer you do not want, and circling the answer you prefer.)
Other or Additional Statements of Desires:
.....
.....
.....
.....

7. DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate any alternative agent but you may do so. Any alternative agent you designate will be able to make the same health care decisions as the agent designated in paragraph 1, page 2, in the event that he or she is unable or unwilling to act as your agent. Also, if the agent designated in paragraph 1 is your spouse, his or her designation as your agent is automatically revoked by law if your marriage is dissolved.)

If the person designated in paragraph 1 as my agent is unable to make health care decisions for me, then I designate the following persons to serve as my agent to make health care decisions for me as authorized in this document, such persons to serve in the order listed below:

- A. First Alternative Agent
Name:
Address:
Telephone Number:
- B. Second Alternative Agent
Name:
Address:



Telephone Number:

8. PRIOR DESIGNATIONS REVOKED.

I revoke any prior durable power of attorney for health care.

9. WAIVER OF CONFLICT OF INTEREST.

If my designated agent is my spouse or is one of my children, then I waive any conflict of interest in carrying out the provisions of this Durable Power of Attorney for Health Care that said spouse or child may have by reason of the fact that he or she may be a beneficiary of my estate.

10. CHALLENGES.

If the legality of any provision of this Durable Power of Attorney for Health Care is questioned by my physician, my agent or a third party, then my agent is authorized to commence an action for declaratory judgment as to the legality of the provision in question. The cost of any such action is to be paid from my estate. This Durable Power of Attorney for Health Care must be construed and interpreted in accordance with the laws of the State of Nevada.

11. NOMINATION OF GUARDIAN.

If, after execution of this Durable Power of Attorney for Health Care, proceedings seeking an adjudication of incapacity are initiated either for my estate or my person, I hereby nominate as my guardian or conservator for consideration by the court my agent herein named, in the order named.

12. RELEASE OF INFORMATION.

I agree to, authorize and allow full release of information by any government agency, medical provider, business, creditor or third party who may have information pertaining to my health care, to my agent named herein, pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and applicable regulations.

(YOU MUST DATE AND SIGN
THIS POWER OF ATTORNEY)

I sign my name to this Durable Power of Attorney for Health Care on (date) at (city),
..... (state)

.....
(Signature)



(THIS POWER OF ATTORNEY WILL NOT BE VALID FOR MAKING HEALTH CARE DECISIONS UNLESS IT IS EITHER (1) SIGNED BY AT LEAST TWO QUALIFIED WITNESSES WHO ARE PERSONALLY KNOWN TO YOU AND WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE OR (2) ACKNOWLEDGED BEFORE A NOTARY PUBLIC.)

CERTIFICATE OF ACKNOWLEDGMENT
OF NOTARY PUBLIC

(You may use acknowledgment before a notary public instead of the statement of witnesses.)

State of Nevada }
County of } ss.

On this..... day of....., in the year..., before me,..... (here insert name of notary public) personally appeared..... (here insert name of principal) personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under penalty of perjury that the person whose name is ascribed to this instrument appears to be of sound mind and under no duress, fraud or undue influence.

NOTARY SEAL
(Signature of Notary Public)

STATEMENT OF WITNESSES

(You should carefully read and follow this witnessing procedure. This document will not be valid unless you comply with the witnessing procedure. If you elect to use witnesses instead of having this document notarized, you must use two qualified adult witnesses. None of the following may be used as a witness: (1) a person you designate as the agent; (2) a provider of health care; (3) an employee of a provider of health care; (4) the operator of a health care facility; or (5) an employee of an operator of a health care facility. At least one of the witnesses must make the



additional declaration set out following the place where the witnesses sign.)

I declare under penalty of perjury that the principal is personally known to me, 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 agent by this document and that I am not a provider of health care, an employee of a provider of health care, the operator of a health care facility or an employee of an operator of a health care facility.

Signature: Residence Address:
Print Name:
Date:

Signature: Residence Address:
Print Name:
Date:

(AT LEAST ONE OF THE ABOVE WITNESSES MUST ALSO SIGN THE FOLLOWING DECLARATION.)

I declare under penalty of perjury that I am not related to the principal by blood, marriage or adoption 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 now existing or by operation of law.

Signature:

Signature:

Names: Address:
Print Name:
Date:

COPIES: You should retain an executed copy of this document and give one to your agent. The power of attorney should be available so a copy may be given to your providers of health care. ***This includes requesting the Nevada Secretary of State to electronically store this document with the Nevada Lockbox to allow access by authorized providers of health care.***



Sec. 6. NRS 225.330 is hereby amended to read as follows:

225.330 “Other document” means a document registered with the Secretary of State pursuant to NRS 225.370 and may include, without limitation, a passport, a birth certificate, a marriage license, ~~for~~ a form requesting to nominate a guardian that is executed in accordance with NRS 159.0753 ~~or~~ *or a power of attorney for health care that is properly executed pursuant to NRS 162A.790.*

Sec. 7. NRS 449A.433 is hereby amended to read as follows:

449A.433 1. A person of sound mind and 18 or more years of age may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declarant may designate another natural person of sound mind and 18 or more years of age to make decisions governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant, or another at the declarant’s direction, and attested by two witnesses.

2. A physician or other provider of health care who is furnished a copy of the declaration shall make it a part of the declarant’s medical record and, if unwilling to comply with the declaration, promptly so advise the declarant and any person designated to act for the declarant.

3. A durable power of attorney for health care properly executed pursuant to NRS 162A.790 regarding the withholding or withdrawal of life-sustaining treatment constitutes for the purposes of NRS 449A.400 to 449A.481, inclusive, a properly executed declaration pursuant to this section.



