

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT  
State/Territory: GEORGIA

REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS  
FOR MEDICAL ASSISTANCE

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

The Official Code of Georgia Annotated concerning advance directives is included herein as pages 1a through 25a of Attachment 4.34-A. Definitions can be referenced at the code cites listed below:

- living will 31-32-2
- durable power of attorney 31-36-2
- witness requirements 31-32-3 and 31-36-5
- proxy designation 31-36-4
- process information 31-32-3 and 31-36-5
- State forms 31-32-3 and 31-36-10
- conscientious objection 31-32-9 and 31-36-7

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## CHAPTER 32

### LIVING WILLS

Sec.		Sec.	
31-32-1.	Legislative findings.	31-32-9.	Living will as not constituting suicide; effect of living will on insurance; restriction on health care facilities' preparing living wills.
31-32-2.	Definitions.		
31-32-3.	Execution; witnesses; form.		
31-32-4.	Patients in hospitals or skilled nursing facilities.		
31-32-8.	Conditions precedent to withholding or withdrawal of life-sustaining procedures; physician's failure or refusal to comply with living will.	31-32-11.	Effect of chapter on other legal rights and duties.

**Law reviews.** — For article, "If Nancy Cruzan Had Lived in Georgia: A Summary of Georgia Law Regarding the Right to Die," see 27 Ga. St. B.J. 194 (1991). For article, "Experimenting With the 'Right to Die' in the Laboratory of the States," see 25 Ga. L. Rev. 1253 (1991).

For comment, "Living Will Statutes in Light of Cruzan v. Director, Missouri Department of Health: Ensuring that a Patient's Wishes Will Prevail", see 40 Emory L.J. 1305 (1991).

#### 31-32-1. Legislative findings.

(a) The General Assembly finds that modern medical technology has made possible the artificial prolongation of human life.

(b) The General Assembly further finds that, in the interest of protecting individual autonomy, such prolongation of life for persons with a terminal condition, a coma, or a persistent vegetative state may cause loss of patient dignity and unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the patient.

(c) The General Assembly further finds that there exists considerable uncertainty in the medical and legal professions as to the legality of terminating the use of life-sustaining procedures in certain situations.

(d) In recognition of the dignity and privacy which patients have a right to expect, the General Assembly declares that the laws of the State of Georgia shall recognize the right of a competent adult person to make a written directive, known as a living will, instructing his physician to withhold or withdraw life-sustaining procedures in the event of a terminal condition, a coma, or a persistent vegetative state. (Code 1981, § 31-32-1, enacted by Ga. L. 1984, p. 1477, § 1; Ga. L. 1992, p. 1926, § 1.)

The 1992 amendment, effective April 16, 1992, in subsections (b) and (d), inserted ", a coma, or a persistent vegetative state".

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 270 (1992).

### 31-32-2. Definitions.

As used in this chapter, the term:

(1) "Attending physician" means the physician who has been selected by or assigned to the patient and who has assumed primary responsibility for the treatment and care of the patient; provided, however, that if the physician selected by or assigned to the patient to provide such treatment and care directs another physician to assume primary responsibility for such care and treatment, the physician who has been so directed shall, upon his or her assumption of such responsibility, be the "attending physician."

(2) "Coma" means a profound state of unconsciousness caused by disease, injury, poison, or other means and for which it has been determined that there exists no reasonable expectation of regaining consciousness. The procedure for establishing a coma is as follows: two physicians, one of whom must be the attending physician, who, after personally examining the declarant, shall certify in writing, based upon conditions found during the course of their examination, that:

(A) The declarant has been in a profound state of unconsciousness for a period of time sufficient for the declarant's physicians to conclude that the unconscious state will continue; and

(B) There exists no reasonable expectation that the declarant will regain consciousness.

(3) "Competent adult" means a person of sound mind who is 18 years of age or older.

(4) "Declarant" means a person who has executed a living will authorized by this chapter.

(5) "Hospital" means a facility which has a valid permit or provisional permit issued under Chapter 7 of this title and which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons.

(6) "Life-sustaining procedures" means any medical procedures or interventions, which, when applied to a patient in a terminal condition or in a coma or persistent vegetative state with no reasonable expectation of regaining consciousness or significant cognitive function, would serve only to prolong the dying process and where, in the

judgment of the attending physician and a second physician, death will occur without such procedures or interventions. The term "life-sustaining procedures" may include, at the option of the declarant, the provision of nourishment and hydration, but shall not include the administration of medication to alleviate pain or the performance of any medical procedure deemed necessary to alleviate pain.

(7) "Living will" means a written document voluntarily executed by the declarant in accordance with the requirements of Code Section 31-32-3 or 31-32-4.

(8) "Patient" means a person receiving care or treatment from a physician.

(9) "Persistent vegetative state" means a state of severe mental impairment in which only involuntary bodily functions are present and for which there exists no reasonable expectation of regaining significant cognitive function. The procedure for establishing a persistent vegetative state is as follows: two physicians, one of whom must be the attending physician, who, after personally examining the declarant, shall certify in writing, based upon conditions found during the course of their examination, that:

(A) The declarant's cognitive function has been substantially impaired; and

(B) There exists no reasonable expectation that the declarant will regain significant cognitive function.

(10) "Physician" means a person lawfully licensed in this state to practice medicine and surgery pursuant to Article 2 of Chapter 34 of Title 43.

(11) "Reasonable expectation" means the result of prudent judgment made on the basis of the medical judgment of a physician.

(12) "Skilled nursing facility" means a facility having a valid permit or provisional permit issued under Chapter 7 of this title and which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(13) "Terminal condition" means incurable condition caused by disease, illness, or injury which, regardless of the application of life-sustaining procedures, would produce death. The procedure for establishing a terminal condition is as follows: two physicians, one of whom must be the attending physician, who, after personally examining the declarant, shall certify in writing, based upon conditions found during the course of their examination, that:

(A) There is no reasonable expectation for improvement in the condition of the declarant; and

(B) Death of the declarant from these conditions will occur as a result of such disease, illness, or injury. (Code 1981, § 31-32-2, enacted by Ga. L. 1984, p. 1477, § 1; Ga. L. 1992, p. 1926, § 2.)

The 1992 amendment, effective April 16, 1992, added present paragraph (2); redesignated former paragraphs (2) through (4) as present paragraphs (3) through (5); rewrote former paragraph (5) and redesignated it as present paragraph (6); redesignated former paragraphs (6) and (7) as present paragraphs (7) and (8); added present paragraph (9); redesignated former paragraph (8) as present paragraph (10); added present paragraph (11); redesignated former paragraphs (9) and (10) as present paragraphs (12) and (13); and, in

paragraph (13), in the second sentence of the introductory paragraph, inserted ", one of whom must be the attending physician." and added ", that" preceding the colon, and in subparagraph (B), substituted "will occur as a result of such disease, illness, or injury" for "is imminent".

Law reviews. — For annual survey of law of wills, trusts, and administration of estates, see 44 Mercer L. Rev. 445 (1992).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 270 (1992).

**31-32-3. Execution; witnesses; form.**

(a) Any competent adult may execute a document directing that, should the declarant have a terminal condition, life-sustaining procedures be withheld or withdrawn. Such living will shall be signed by the declarant in the presence of at least two competent adults who, at the time of the execution of the living will, to the best of their knowledge:

- (1) Are not related to the declarant by blood or marriage;
- (2) Would not be entitled to any portion of the estate of the declarant upon the declarant's decease under any testamentary will of the declarant, or codicil thereto, and would not be entitled to any such portion by operation of law under the rules of descent and distribution of this state at the time of the execution of the living will;
- (3) Are neither the attending physician nor an employee of the attending physician nor an employee of the hospital or skilled nursing facility in which the declarant is a patient;
- (4) Are not directly financially responsible for the declarant's medical care; and
- (5) Do not have a claim against any portion of the estate of the declarant.

(b) The declaration shall i  
Any declaration which const  
shall be honored, regardless  
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Decla-  
nitely

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unless revoked. A declaration similar to the following form or in substantially the form specified under prior law shall be presumed on its face to be valid and effective:

"LIVING WILL

Living will made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year).

I, \_\_\_\_\_, being of sound mind, willfully and voluntarily make known my desire that my life shall not be prolonged under the circumstances set forth below and do declare:

1. If at any time I should (check each option desired):

- have a terminal condition,
- become in a coma with no reasonable expectation of regaining consciousness, or
- become in a persistent vegetative state with no reasonable expectation of regaining significant cognitive function,

as defined in and established in accordance with the procedures set forth in paragraphs (2), (9), and (13) of Code Section 31-32-2 of the Official Code of Georgia Annotated, I direct that the application of life-sustaining procedures to my body (check the option desired):

- including nourishment and hydration,
- including nourishment but not hydration, or
- excluding nourishment and hydration,

be withheld or withdrawn and that I be permitted to die;

2. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this living will shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal;

3. I understand that I may revoke this living will at any time;

4. I understand the full import of this living will, and I am at least 18 years of age and am emotionally and mentally competent to make this living will; and

5. If I am a female and I have been diagnosed as pregnant, this living will shall have no force and effect unless the fetus is not viable and I indicate by initialing after this sentence that I want this living will to be carried out. (Initial)

Signed \_\_\_\_\_

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EFFECTIVE	1-1-94
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\_\_\_\_\_ (City), \_\_\_\_\_ (County), and \_\_\_\_\_ (State of  
Residence).

I hereby witness this living will and attest that:

(1) The declarant is personally known to me and I believe the  
declarant to be at least 18 years of age and of sound mind;

(2) I am at least 18 years of age;

(3) To the best of my knowledge, at the time of the execution of  
this living will, I:

(A) Am not related to the declarant by blood or marriage;

(B) Would not be entitled to any portion of the declarant's  
estate by any will or by operation of law under the rules of descent  
and distribution of this state;

(C) Am not the attending physician of declarant or an em-  
ployee of the attending physician or an employee of the hospital  
or skilled nursing facility in which declarant is a patient;

(D) Am not directly financially responsible for the declarant's  
medical care; and

(E) Have no present claim against any portion of the estate of  
the declarant;

(4) Declarant has signed this document in my presence as above  
instructed, on the date above first shown.

Witness \_\_\_\_\_

Address \_\_\_\_\_

Witness \_\_\_\_\_

Address \_\_\_\_\_

Additional witness required when living will is signed in a hospital  
or skilled nursing facility.

I hereby witness this living will and attest that I believe the declarant  
to be of sound mind and to have made this living will willingly and  
voluntarily.

Witness: \_\_\_\_\_

Medical director of skilled nursing facil-  
ity or staff physician not participating in  
care of the patient or chief of the hospi-  
tal medical staff or staff physician or  
hospital designee not participating in  
care of the patient."

(Code 1981, § 31-32-3, enacted by Ga. L. 1984, p. 1477, § 1; Ga. L. 1986, p. 445, § 2; Ga. L. 1989, p. 1182, § 1; Ga. L. 1992, p. 1926, § 3; Ga. L. 1993, p. 91, § 31.)

**The 1992 amendment**, effective April 16, 1992, in subsection (b), rewrote the introductory language, rewrote paragraphs 1 and 5 of the living will form, and inserted "or hospital designee" near the end of the form.

**The 1993 amendment**, effective March 22, 1993, in the introductory language of subsection (b), substituted "March 28" for "March 18", in the living will form contained in subsection (b), substituted "paragraphs (2), (9), and (13)" for "paragraphs (2), (9), and (10)", and, in item 1 of the

living will form contained in subsection (b), substituted "( ) including nourishment but not hydration, or" for "( ) including hydration but not nourishment, or".

**Code Commission notes.** — Pursuant to Code Section 28-9-5, in 1992, "above instructed" was substituted for "above-instructed" in paragraph (4) of the witness statement form in subsection (b).

**Law reviews.** — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 270 (1992).

#### **31-32-4. Patients in hospitals or skilled nursing facilities.**

A living will shall have no force or effect if the declarant is a patient in a hospital or skilled nursing facility at the time the living will is executed unless the living will is signed in the presence of the two witnesses as provided in Code Section 31-32-3 and, additionally, is signed in the presence of either the chief of the hospital medical staff, any physician on the medical staff who is not participating in the care of the patient, or a person on the hospital staff who is not participating in the care of the patient designated by the chief of staff and the hospital administrator, if witnessed in a hospital, or the medical director or any physician on the medical staff who is not participating in the care of the patient, if witnessed in a skilled nursing facility. (Code 1981, § 31-32-4, enacted by Ga. L. 1984, p. 1477, § 1; Ga. L. 1989, p. 1182, § 2; Ga. L. 1992, p. 1926, § 4.)

**The 1992 amendment**, effective April 16, 1992, near the middle of the Code section, substituted a comma for "or" following "medical staff" and inserted after the next comma "or a person on the hospital staff who is not participating in the care of

the patient designated by the chief of staff and the hospital administrator."

**Law reviews.** — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 270 (1992).

#### **31-32-8. Conditions precedent to withholding or withdrawal of life-sustaining procedures; physician's failure or refusal to comply with living will.**

(a) Prior to effecting a withholding or withdrawal of life-sustaining procedures from a patient pursuant to a living will, the attending physician:

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(1) Shall determine that, to the best of his knowledge, the declarant patient is not pregnant, or if she is, that the fetus is not viable and that the declarant's living will specifically indicates that the living will is to be carried out;

(2) Shall, without delay after the diagnosis of a terminal condition of the declarant, take the necessary steps to provide for the written certification required by Code Section 31-32-2 of the declarant's terminal condition, coma, or persistent vegetative state;

(3) Shall make a reasonable effort to determine that the living will complies with subsection (b) of Code Section 31-32-3; and

(4) Shall make the living will and the written certification of the terminal condition, coma, or persistent vegetative state a part of the declarant patient's medical records.

(b) The living will shall be presumed, unless revoked, to be the directions of the declarant regarding the withholding or withdrawal of life-sustaining procedures. No person shall be civilly liable for failing or refusing in good faith to effectuate the living will of the declarant patient. The attending physician who fails or refuses to comply with the declaration of a patient pursuant to this chapter shall endeavor to advise promptly the next of kin or legal guardian of the declarant that such physician is unwilling to effectuate the living will of the declarant patient. The attending physician shall thereafter at the election of the next of kin or the legal guardian of the declarant:

(1) Make a good faith attempt to effect the transfer of the qualified patient to another physician who will effectuate the declaration of the patient; or

(2) Permit the next of kin or legal guardian to obtain another physician who will effectuate the declaration of the patient. (Code 1981, § 31-32-8, enacted by Ga. L. 1984, p. 1477, § 1; Ga. L. 1992, p. 1926, § 5.)

The 1992 amendment, effective April 16, 1992, in subsection (a), made the following changes: in paragraph (1), added all of the language following "pregnant"; in paragraph (2), substituted all of the present language following "provide for" for "written certification by said physician

of the declarant's terminal condition"; and, in paragraph (4), inserted ", coma, or persistent vegetative state".

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 270 (1992).

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**31-32-9. Living will as not constituting suicide; effect of living will on insurance; restriction on health care facilities' preparing living wills.**

(a) The making of a living will pursuant to this chapter shall not, for any purpose, constitute a suicide.

(b) The making of a living will pursuant to this chapter shall not restrict, inhibit, or impair in any manner the sale, procurement, issuance, or enforceability of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the making of a living will pursuant to this chapter or by the withholding or withdrawal of life-sustaining procedures from an insured patient, nor shall the making of such a living will or the withholding or withdrawal of such life-sustaining procedures operate to deny any additional insurance benefits for accidental death of the patient in any case in which the terminal condition of the patient is the result of accident, notwithstanding any term of the policy to the contrary.

(c) No physician, hospital, skilled nursing facility, or other health provider and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan shall require any person to execute a living will as a condition for being insured for, or receiving, health care services.

(d) No hospital, skilled nursing facility, or other medical or health care facility shall prepare or offer to prepare living wills unless specifically requested to do so by a person desiring to execute a living will. For purposes of this article, a person in the custody of the Department of Corrections shall not be deemed to be a patient within the meaning of this article, nor shall a correctional facility be deemed to be a hospital, skilled nursing facility, nor any other medical or health care facility. (Code 1981, § 31-32-9, enacted by Ga. L. 1984, p. 1477, § 1; Ga. L. 1985, p. 455, § 1; Ga. L. 1992, p. 1926, § 6.)

The 1992 amendment, effective April 16, 1992, in the first sentence of subsection (d), substituted "shall prepare or offer to prepare" for "shall prepare, offer to prepare, or otherwise provide forms for"; and added the second sentence of subsection (d).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "this article" was substituted for "this Article" twice in subsection (d).

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 270 (1992).

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**31-32-11. Effect of chapter on other legal rights and duties.**

(a) Nothing in this chapter shall ~~impair or~~ supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining procedures in any lawful manner. In such respect the provisions of this chapter are cumulative.

(b) Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing or to permit any affirmative or deliberate act or omission to end life other than to permit the process of dying as provided in this chapter. Furthermore, nothing in this chapter shall be construed to condone, authorize, or approve abortion.

(c) This chapter shall create no presumption concerning the intention of an individual who has not executed a declaration to consent to the use or withholding of life-sustaining procedures in the event of a terminal condition, a coma, or a persistent vegetative state.

(d) Unless otherwise specifically provided in a durable power of attorney for health care, a declaration under this chapter is ineffective and inoperative as long as there is an agent available to serve pursuant to a durable power of attorney executed in accordance with the provisions of Chapter 36 of this title, the "Durable Power of Attorney for Health Care Act," which grants the agent authority with respect to the withdrawal or withholding of life-sustaining or death-delaying treatment under the same circumstances as those covered by a declaration under this chapter. (Code 1981, § 31-32-11, enacted by Ga. L. 1984, p. 1477, § 1; Ga. L. 1992, p. 1926, § 7.)

The 1992 amendment, effective April 16, 1992, at the end of subsection (c), added "a coma, or a persistent vegetative state"; and added subsection (d).

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 270 (1992).

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31-36-1 DURABLE POWER OF ATTORNEY FOR HEALTH CARE 31-36-2

CHAPTER 36

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

Sec.		Sec.	
31-36-1.	Short title.	31-36-8.	Immunity from liability or disciplinary action; death not constituting suicide or homicide.
31-36-2.	Legislative findings.	31-36-9.	Penalties for violations.
31-36-3.	Definitions.	31-36-10.	Form of power of attorney for health care; authorized powers.
31-36-4.	Delegation of health care powers to agent; death of principal; rights regarding life-sustaining or death-delaying procedures.	31-36-11.	Applicability of chapter; principal with living will; priority of agent's authority.
31-36-5.	Execution of agency; health care provider not qualified as agent; limitations on authority of agent.	31-36-12.	Prior agency or act of agent not affected.
31-36-6.	Revocation or amendment of agency.	31-36-13.	Construction of chapter in relation to Title 53.
31-36-7.	Duties and responsibilities of health care provider.		

**Effective date.** — This chapter became effective July 1, 1990.

**Cross references.** — Living wills, Title 31, Chapter 32. Cardiopulmonary resuscitation, Title 31, Chapter 39.

**31-36-1. Short title.**

This chapter shall be known and may be cited as the "Durable Power of Attorney for Health Care Act." (Code 1981, § 31-36-1, enacted by Ga. L. 1990, p. 1101, § 1.)

**31-36-2. Legislative findings.**

(a) The General Assembly recognizes the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to decline medical treatment or to direct that it be withdrawn. However, if the individual becomes disabled, incapacitated, or incompetent, his or her right to control treatment may be denied unless the individual, as principal, can delegate the decision-making power to a trusted agent and be sure that the agent's power to make personal and health care decisions for the principal will be effective to the same extent as though made by the principal.

(b) This recognition of the right of delegation for health care purposes must be stated to make it clear that its scope is intended to be as broad as the comparable right of delegation for property and financial matters. However, the General Assembly recognizes that powers con-

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cerning health care decisions are more sensitive than property matters and that particular rules and forms are necessary for health care agencies to ensure their validity and efficacy and to protect health care providers so that they will honor the authority of the agent at all times. Nothing in this chapter shall be deemed to authorize or encourage euthanasia, suicide, or any action or course of action that violates the criminal laws of this state or the United States.

(c) In furtherance of these purposes, the General Assembly enacts this chapter, setting forth general principles governing health care agencies, as well as a statutory short form durable power of attorney for health care, intending that when a power in substantially the form set forth in this chapter is used, health care providers and other third parties who rely in good faith on the acts and decisions of the agent within the scope of the power may do so without fear of civil or criminal liability to the principal, the state, or any other person. However, the form of health care agency set forth in this chapter is not intended to be exclusive, and other forms of powers of attorney chosen by the principal that comply with Code Section 31-36-5 may offer powers and protections similar to the statutory short form durable power of attorney for health care. (Code 1981, § 31-36-2, enacted by Ga. L. 1990, p. 1101, § 1.)

### 31-36-3. Definitions.

As used in this chapter, the term:

(1) "Attending physician" means the physician who has primary responsibility at the time of reference for the treatment and care of the patient.

(2) "Health care" means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the patient's physical or mental health or personal care.

(3) "Health care agency" or "agency" means an agency governing any type of health care, anatomical gift, autopsy, or disposition of remains for and on behalf of a patient and refers to the power of attorney or other written instrument defining the agency, or the agency itself, as appropriate to the context.

(4) "Health care provider" or "provider" means the attending physician and any other person administering health care to the patient at the time of reference who is licensed, certified, or otherwise authorized or permitted by law to administer health care in the ordinary course of business or the practice of a profession, including any person employed by or acting for any such authorized person.

(5) "Hospital" means a facility which has a valid permit or provisional permit issued under Chapter 7 of this title and which is primar-

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ily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons.

(6) "Patient" means the principal.

(7) "Skilled nursing facility" means a facility which has a valid permit or provisional permit issued under Chapter 7 of this title and which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. (Code 1981, § 31-36-3, enacted by Ga. L. 1990, p. 1101, § 1.)

**31-36-4. Delegation of health care powers to agent; death of principal; rights regarding life-sustaining or death-delaying procedures.**

The health care powers that may be delegated to an agent include, without limitation, all powers an individual may have to be informed about and to consent to or refuse or withdraw any type of health care for the individual. A health care agency may extend beyond the principal's death if necessary to permit anatomical gift, autopsy, or disposition of remains. Nothing in this chapter shall impair or supersede any legal right or legal responsibility which any person may have to effect the withholding or withdrawal of life-sustaining or death-delaying procedures in any lawful manner, and the provisions of this chapter are cumulative in such respect. (Code 1981, § 31-36-4, enacted by Ga. L. 1990, p. 1101, § 1.)

**31-36-5. Execution of agency; health care provider not qualified as agent; limitations on authority of agent.**

(a) A health care agency shall be in writing and signed by the principal or by some other person in the principal's presence and by the principal's express direction. A health care agency shall be attested and subscribed in the presence of the principal by two or more competent witnesses who are at least 18 years of age. In addition, if at the time a health care agency is executed the principal is a patient in a hospital or skilled nursing facility, the health care agency shall also be attested and subscribed in the presence of the principal by the principal's attending physician.

(b) No health care provider may act as agent under a health care agency if he or she is directly or indirectly involved in the health care rendered to the patient under the health care agency.

(c) An agent under a health care agency shall not have the authority to make a particular health care decision different from or contrary to the

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patient's decision, if any, if the patient is able to understand the general nature of the health care procedure being consented to or refused, as determined by the patient's attending physician based on such physician's good faith judgment. (Code 1981, § 31-36-5, enacted by Ga. L. 1990, p. 1101, § 1.)

**31-36-6. Revocation or amendment of agency.**

(a) Every health care agency may be revoked by the principal at any time, without regard to the principal's mental or physical condition, by any of the following methods:

(1) By being obliterated, burned, torn, or otherwise destroyed or defaced in a manner indicating an intention to revoke;

(2) By a written revocation of the agency signed and dated by the principal or by a person acting at the direction of the principal; or

(3) By an oral or any other expression of the intent to revoke the agency in the presence of a witness 18 years of age or older who, within 30 days of the expression of such intent, signs and dates a writing confirming that such expression of intent was made.

(b) Unless the health care agency expressly provides otherwise, if, after executing a health care agency, the principal marries, such marriage shall revoke the designation of a person other than the principal's spouse as the principal's agent to make health care decisions for the principal; and if, after executing a health care agency, the principal's marriage is dissolved or annulled, such dissolution or annulment shall revoke the principal's former spouse as the principal's agent to make health care decisions for the principal.

(c) A health care agency which survives disability shall not be revoked solely by the appointment of a guardian or receiver for the principal. Absent an order of a court of competent jurisdiction directing a guardian to exercise powers of the principal under an agency that survives disability, the guardian has no power, duty, or liability with respect to any personal or health care matters covered by the agency.

(d) A health care agency may be amended at any time by a written amendment executed in accordance with the provisions of subsection (a) of Code Section 31-36-5.

(e) Any person, other than the agent, to whom a revocation or amendment of a health care agency is communicated or delivered shall make all reasonable efforts to inform the agent of that fact as promptly as possible. (Code 1981, § 31-36-6, enacted by Ga. L. 1990, p. 1101, § 1.)

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**31-36-7 DURABLE POWER OF ATTORNEY FOR HEALTH CARE 31-36-7****31-36-7. Duties and responsibilities of health care provider.**

Each health care provider and each other person with whom an agent deals under a health care agency shall be subject to the following duties and responsibilities:

(1) It is the responsibility of the agent or patient to notify the health care provider of the existence of the health care agency and any amendment or revocation thereof. A health care provider furnished with a copy of a health care agency shall make it a part of the patient's medical records and shall enter in the records any change in or termination of the health care agency by the principal that becomes known to the provider. Whenever a provider believes a patient is unable to understand the general nature of the health care procedure which the provider deems necessary, the provider shall consult with any available health care agent known to the provider who then has power to act for the patient under a health care agency;

(2) A health care decision made by an agent in accordance with the terms of a health care agency shall be complied with by every health care provider to whom the decision is communicated, subject to the provider's right to administer treatment for the patient's comfort or alleviation of pain; but, if the provider is unwilling to comply with the agent's decision, the provider shall promptly inform the agent who shall then be responsible to make the necessary arrangements for the transfer of the patient to another provider. A provider who is unwilling to comply with the agent's decision will continue to afford reasonably necessary consultation and care in connection with the pending transfer;

(3) At the patient's expense and subject to reasonable rules of the health care provider to prevent disruption of the patient's health care, each health care provider shall give an agent authorized to receive such information under a health care agency the same right the principal has to examine and copy any part or all of the patient's medical records that the agent deems relevant to the exercise of the agent's powers, whether the records relate to mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, hospital, nursing home, or other health care provider, notwithstanding the provisions of any statute or rule of law to the contrary; and

(4) If and to the extent a health care agency empowers the agent to:

(A) Make an anatomical gift on behalf of the principal under Article 6 of Chapter 5 of Title 44, the "Georgia Anatomical Gift Act," as now or hereafter amended;

(B) Authorize an autopsy of the principal's body; or

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(C) Direct the disposition of the principal's remains,

the anatomical gift, autopsy approval, or remains disposition shall be deemed the act of the principal or of the person who has priority under law to make the necessary decisions and each person to whom a direction by the agent in accordance with the terms of the agency is communicated shall comply with such direction to the extent it is in accord with reasonable medical standards or other relevant standards at the time of reference. (Code 1981, § 31-36-7, enacted by Ga. L. 1990, p. 1101, § 1.)

**31-36-8. Immunity from liability or disciplinary action; death not constituting suicide or homicide.**

Each health care provider and each other person who acts in good faith reliance on any direction or decision by the agent that is not clearly contrary to the terms of a health care agency will be protected and released to the same extent as though such person had dealt directly with the principal as a fully competent person. Without limiting the generality of the foregoing, the following specific provisions shall also govern, protect, and validate the acts of the agent and each such health care provider and other person acting in good faith reliance on such direction or decision:

(1) No such provider or person shall be subject to any type of civil or criminal liability or discipline for unprofessional conduct solely for complying with any direction or decision by the agent, even if death or injury to the patient ensues;

(2) No such provider or person shall be subject to any type of civil or criminal liability or discipline for unprofessional conduct solely for failure to comply with any direction or decision by the agent, as long as such provider or person promptly informs the agent of such provider's or person's refusal or failure to comply with such direction or decision by the agent. The agent shall then be responsible to make the necessary arrangements for the transfer of the patient to another health care provider. A health care provider who is unwilling to comply with the agent's decision will continue to afford reasonably necessary consultation and care in connection with the pending transfer;

(3) If the actions of a health care provider or person who fails to comply with any direction or decision by the agent are substantially in accord with reasonable medical standards at the time of reference and the provider cooperates in the transfer of the patient pursuant to paragraph (2) of Code Section 31-36-7, the health care provider or person shall not be subject to any type of civil or criminal liability or discipline for unprofessional conduct for failure to comply with the agency;

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(4) No agent who, in good faith, acts with due care for the benefit of the patient and in accordance with the terms of a health care agency, or who fails to act, shall be subject to any type of civil or criminal liability for such action or inaction;

(5) If the authority granted by a health care agency is revoked under Code Section 31-36-6, a person will not be subject to criminal prosecution or civil liability for acting in good faith reliance upon such health care agency unless such person had actual knowledge of the revocation; and

(6) If the patient's death results from withholding or withdrawing life-sustaining or death-delaying treatment in accordance with the terms of a health care agency, the death shall not constitute a suicide or homicide for any purpose under any statute or other rule of law and shall not impair or invalidate any insurance, annuity, or other type of contract that is conditioned on the life or death of the patient, any term of the contract to the contrary notwithstanding. (Code 1981, § 31-36-8, enacted by Ga. L. 1990, p. 1101, § 1.)

**31-36-9. Penalties for violations.**

All persons shall be subject to the following sanctions in relation to health care agencies, in addition to all other sanctions applicable under any other law or rule of professional conduct:

(1) Any person shall be civilly liable who, without the principal's consent, willfully conceals, cancels, or alters a health care agency or any amendment or revocation of the agency or who falsifies or forges a health care agency, amendment, or revocation;

(2) A person who falsifies or forges a health care agency or willfully conceals or withholds personal knowledge of an amendment or revocation of a health care agency with the intent to cause a withholding or withdrawal of life-sustaining or death-delaying procedures contrary to the intent of the principal and thereby, because of such act, directly causes life-sustaining or death-delaying procedures to be withheld or withdrawn, shall be subject to prosecution for criminal homicide as provided for in Chapter 5 of Title 16; and

(3) Any person who requires or prevents execution of a health care agency as a condition of ensuring or providing any type of health care services to the patient shall be civilly liable and guilty of a misdemeanor and shall be punished as provided by law. (Code 1981, § 31-36-9, enacted by Ga. L. 1990, p. 1101, § 1.)

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**31-36-10. Form of power of attorney for health care; authorized powers.**

(a) The statutory health care power of attorney form contained in this subsection may be used to grant an agent powers with respect to the principal's own health care; but the statutory health care power is not intended to be exclusive or to cover delegation of a parent's power to control the health care of a minor child, and no provision of this chapter shall be construed to bar use by the principal of any other or different form of power of attorney for health care that complies with Code Section 31-36-5. If a different form of power of attorney for health care is used, it may contain any or all of the provisions set forth or referred to in the following form. When a power of attorney in substantially the following form is used, including the notice paragraph in capital letters at the beginning, it shall have the meaning and effect prescribed in this chapter. The statutory health care power may be included in or combined with any other form of power of attorney governing property or other matters:

**"GEORGIA STATUTORY SHORT FORM****DURABLE POWER OF ATTORNEY FOR HEALTH CARE**

**NOTICE: THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON YOU DESIGNATE (YOUR AGENT) BROAD POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU, INCLUDING POWER TO REQUIRE, CONSENT TO, OR WITHDRAW ANY TYPE OF PERSONAL CARE OR MEDICAL TREATMENT FOR ANY PHYSICAL OR MENTAL CONDITION AND TO ADMIT YOU TO OR DISCHARGE YOU FROM ANY HOSPITAL, HOME, OR OTHER INSTITUTION; BUT NOT INCLUDING PSYCHOSURGERY, STERILIZATION, OR INVOLUNTARY HOSPITALIZATION OR TREATMENT COVERED BY TITLE 37 OF THE OFFICIAL CODE OF GEORGIA ANNOTATED. THIS FORM DOES NOT IMPOSE A DUTY ON YOUR AGENT TO EXERCISE GRANTED POWERS; BUT, WHEN A POWER IS EXERCISED, YOUR AGENT WILL HAVE TO USE DUE CARE TO ACT FOR YOUR BENEFIT AND IN ACCORDANCE WITH THIS FORM. A COURT CAN TAKE AWAY THE POWERS OF YOUR AGENT IF IT FINDS THE AGENT IS NOT ACTING PROPERLY. YOU MAY NAME COAGENTS AND SUCCESSOR AGENTS UNDER THIS FORM, BUT YOU MAY NOT NAME A HEALTH CARE PROVIDER WHO MAY BE DIRECTLY OR INDIRECTLY INVOLVED IN RENDERING HEALTH CARE TO YOU UNDER THIS POWER. UNLESS YOU EXPRESSLY LIMIT THE DURATION OF THIS POWER IN THE MANNER PROVIDED BELOW**

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OR UNTIL YOU REVOKE THIS POWER OR A COURT ACTING ON YOUR BEHALF TERMINATES IT, YOUR AGENT MAY EXERCISE THE POWERS GIVEN IN THIS POWER THROUGHOUT YOUR LIFETIME, EVEN AFTER YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT. THE POWERS YOU GIVE YOUR AGENT, YOUR RIGHT TO REVOKE THOSE POWERS, AND THE PENALTIES FOR VIOLATING THE LAW ARE EXPLAINED MORE FULLY IN CODE SECTIONS 31-36-6, 31-36-9, AND 31-36-10 OF THE GEORGIA 'DURABLE POWER OF ATTORNEY FOR HEALTH CARE ACT' OF WHICH THIS FORM IS A PART (SEE THE BACK OF THIS FORM). THAT ACT EXPRESSLY PERMITS THE USE OF ANY DIFFERENT FORM OF POWER OF ATTORNEY YOU MAY DESIRE. IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

DURABLE POWER OF ATTORNEY made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

I, \_\_\_\_\_  
(insert name and address of principal)

hereby appoint \_\_\_\_\_  
(insert name and address of agent)

as my attorney in fact (my agent) to act for me and in my name in any way I could act in person to make any and all decisions for me concerning my personal care, medical treatment, hospitalization, and health care and to require, withhold, or withdraw any type of medical treatment or procedure, even though my death may ensue. My agent shall have the same access to my medical records that I have, including the right to disclose the contents to others. My agent shall also have full power to make a disposition of any part or all of my body for medical purposes, authorize an autopsy of my body, and direct the disposition of my remains.

THE ABOVE GRANT OF POWER IS INTENDED TO BE AS BROAD AS POSSIBLE SO THAT YOUR AGENT WILL HAVE AUTHORITY TO MAKE ANY DECISION YOU COULD MAKE TO OBTAIN OR TERMINATE ANY TYPE OF HEALTH CARE, INCLUDING WITHDRAWAL OF NOURISHMENT AND FLUIDS AND OTHER LIFE-SUSTAINING OR DEATH-DELAYING MEASURES, IF YOUR AGENT BELIEVES SUCH ACTION WOULD BE CONSISTENT WITH YOUR INTENT AND DESIRES. IF YOU WISH TO LIMIT THE SCOPE OF YOUR AGENT'S POWERS OR PRESCRIBE SPECIAL RULES TO LIMIT THE POWER TO MAKE AN ANATOMICAL GIFT, AUTHORIZE AUTOPSY, OR DISPOSE

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OF REMAINS, YOU MAY DO SO IN THE FOLLOWING PARAGRAPHS.

2. The powers granted above shall not include the following powers or shall be subject to the following rules or limitations (here you may include any specific limitations you deem appropriate, such as your own definition of when life-sustaining or death-delaying measures should be withheld; a direction to continue nourishment and fluids or other life-sustaining or death-delaying treatment in all events; or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs or unacceptable to you for any other reason, such as blood transfusion, electroconvulsive therapy, or amputation):

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THE SUBJECT OF LIFE-SUSTAINING OR DEATH-DELAYING TREATMENT IS OF PARTICULAR IMPORTANCE. FOR YOUR CONVENIENCE IN DEALING WITH THAT SUBJECT, SOME GENERAL STATEMENTS CONCERNING THE WITHHOLDING OR REMOVAL OF LIFE-SUSTAINING OR DEATH-DELAYING TREATMENT ARE SET FORTH BELOW. IF YOU AGREE WITH ONE OF THESE STATEMENTS, YOU MAY INITIAL THAT STATEMENT, BUT DO NOT INITIAL MORE THAN ONE:

I do not want my life to be prolonged nor do I want life-sustaining or death-delaying treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, the expense involved, and the quality as well as the possible extension of my life in making decisions concerning life-sustaining or death-delaying treatment.

Initialed \_\_\_\_\_

I want my life to be prolonged and I want life-sustaining or death-delaying treatment to be provided or continued unless I am in a coma, including a persistent vegetative state, which my attending physician believes to be irreversible, in accordance with reasonable medical standards at the time of reference. If and when I have suffered such an irreversible coma, I want life-sustaining or death-delaying treatment to be withheld or discontinued.

Initialed \_\_\_\_\_

I want my life to be prolonged to the greatest extent possible without regard to my condition, the chances I have for recovery, or the cost of the procedures.

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Initialed \_\_\_\_\_

THIS POWER OF ATTORNEY MAY BE AMENDED OR REVOKED BY YOU AT ANY TIME AND IN ANY MANNER WHILE YOU ARE ABLE TO DO SO. IN THE ABSENCE OF AN AMENDMENT OR REVOCATION, THE AUTHORITY GRANTED IN THIS POWER OF ATTORNEY WILL BECOME EFFECTIVE AT THE TIME THIS POWER IS SIGNED AND WILL CONTINUE UNTIL YOUR DEATH AND WILL CONTINUE BEYOND YOUR DEATH IF ANATOMICAL GIFT, AUTOPSY, OR DISPOSITION OF REMAINS IS AUTHORIZED, UNLESS A LIMITATION ON THE BEGINNING DATE OR DURATION IS MADE BY INITIALING AND COMPLETING EITHER OR BOTH OF THE FOLLOWING:

3. ( ) This power of attorney shall become effective on \_\_\_\_\_ (insert a future date or event during your lifetime, such as court determination of your disability, incapacity, or incompetency, when you want this power to first take effect).

4. ( ) This power of attorney shall terminate on \_\_\_\_\_ (insert a future date or event, such as court determination of your disability, incapacity, or incompetency, when you want this power to terminate prior to your death).

IF YOU WISH TO NAME SUCCESSOR AGENTS, INSERT THE NAMES AND ADDRESSES OF SUCH SUCCESSORS IN THE FOLLOWING PARAGRAPH:

5. If any agent named by me shall die, become legally disabled, incapacitated, or incompetent, or resign, refuse to act, or be unavailable, I name the following (each to act successively in the order named) as successors to such agent:

\_\_\_\_\_  
\_\_\_\_\_

IF YOU WISH TO NAME A GUARDIAN OF YOUR PERSON IN THE EVENT A COURT DECIDES THAT ONE SHOULD BE APPOINTED, YOU MAY, BUT ARE NOT REQUIRED TO, DO SO BY INSERTING THE NAME OF SUCH GUARDIAN IN THE FOLLOWING PARAGRAPH. THE COURT WILL APPOINT THE PERSON NOMINATED BY YOU IF THE COURT FINDS THAT SUCH APPOINTMENT WILL SERVE YOUR BEST INTERESTS AND WELFARE. YOU MAY, BUT ARE NOT REQUIRED TO, NOMINATE AS YOUR GUARDIAN THE SAME PERSON NAMED IN THIS FORM AS YOUR AGENT.

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6. If a guardian of my person is to be appointed, I nominate the following to serve as such guardian:

\_\_\_\_\_ (insert name and address of nominated guardian of the person)

7. I am fully informed as to all the contents of this form and understand the full import of this grant of powers to my agent.

Signed \_\_\_\_\_  
(Principal)

The principal has had an opportunity to read the above form and has signed the above form in our presence. We, the undersigned, each being over 18 years of age, witness the principal's signature at the request and in the presence of the principal, and in the presence of each other, on the day and year above set out.

Witnesses:	Addresses:
_____	_____
_____	_____
_____	_____

Additional witness required when health care agency is signed in a hospital or skilled nursing facility.

I hereby witness this health care agency and attest that I believe the principal to be of sound mind and to have made this health care agency willingly and voluntarily.

Witness: \_\_\_\_\_  
Attending Physician

Address: \_\_\_\_\_  
\_\_\_\_\_

YOU MAY, BUT ARE NOT REQUIRED TO, REQUEST YOUR AGENT AND SUCCESSOR AGENTS TO PROVIDE SPECIMEN SIGNATURES BELOW. IF YOU INCLUDE SPECIMEN SIGNATURES IN THIS POWER OF ATTORNEY, YOU MUST COMPLETE THE CERTIFICATION OPPOSITE THE SIGNATURES OF THE AGENTS.

Specimen signatures of agent and successor(s)

\_\_\_\_\_  
(Agent)

I certify that the signature of my agent and successor(s) is correct.

\_\_\_\_\_  
(Principal)

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(Successor agent)	(Principal)
(Successor agent)	(Principal)"

(b) The foregoing statutory health care power of attorney form authorizes, and any different form of health care agency may authorize, the agent to make any and all health care decisions on behalf of the principal which the principal could make if present and under no disability, incapacity, or incompetency, subject to any limitations on the granted powers that appear on the face of the form, to be exercised in such manner as the agent deems consistent with the intent and desires of the principal. The agent will be under no duty to exercise granted powers or to assume control of or responsibility for the principal's health care; but, when granted powers are exercised, the agent will be required to use due care to act for the benefit of the principal in accordance with the terms of the statutory health care power and will be liable for negligent exercise. The agent may act in person or through others reasonably employed by the agent for that purpose but may not delegate authority to make health care decisions. The agent may sign and deliver all instruments, negotiate and enter into all agreements, and do all other acts reasonably necessary to implement the exercise of the powers granted to the agent. Without limiting the generality of the foregoing, the statutory health care power form shall, and any different form of health care agency may, include the following powers, subject to any limitations appearing on the face of the form:

(1) The agent is authorized to consent to and authorize or refuse, or to withhold or withdraw consent to, any and all types of medical care, treatment, or procedures relating to the physical or mental health of the principal, including any medication program, surgical procedures, life-sustaining or death-delaying treatment, or provision of nourishment and fluids for the principal, but not including psychosurgery, sterilization, or involuntary hospitalization or treatment covered by Title 37;

(2) The agent is authorized to admit the principal to or discharge the principal from any and all types of hospitals, insitutions, homes, residential or nursing facilities, treatment centers, and other health care insitutions providing personal care or treatment for any type of physical or mental condition, but not including psychosurgery, sterilization, or involuntary hospitalization or treatment covered by Title 37;

(3) The agent is authorized to contract for any and all types of health care services and facilities in the name of and on behalf of the principal and to bind the principal to pay for all such services and facilities, and the agent shall not be personally liable for any services or care contracted for on behalf of the principal;

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(4) At the principal's expense and subject to reasonable rules of the health care provider to prevent disruption of the principal's health care, the agent shall have the same right the principal has to examine and copy and consent to disclosure of all the principal's medical records that the agent deems relevant to the exercise of the agent's powers, whether the records relate to mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, hospital, nursing home, or other health care provider, notwithstanding the provisions of any statute or other rule of law to the contrary; and

(5) The agent is authorized to direct that an autopsy of the principal's body be made; to make a disposition of any part or all of the principal's body pursuant to Article 6 of Chapter 5 of Title 44, the "Georgia Anatomical Gift Act," as now or hereafter amended; and to direct the disposition of the principal's remains. (Code 1981, § 31-36-10, enacted by Ga. L. 1990, p. 1101, § 1.)

**31-36-11. Applicability of chapter; principal with living will; priority of agent's authority.**

This chapter applies to all health care providers and other persons in relation to all health care agencies executed on and after July 1, 1990. This chapter supersedes all other provisions of law or parts thereof existing on July 1, 1990, to the extent such other provisions are inconsistent with the terms and operation of this chapter, provided that this chapter does not affect the provisions of law governing emergency health care. If the principal has a living will under Chapter 32 of this title, as now or hereafter amended, the living will shall not be operative so long as an agent is available who is authorized by a health care agency to deal with the subject of life-sustaining or death-delaying procedures for and on behalf of the principal. Furthermore, unless the health care agency provides otherwise, the agent who is known to the health care provider to be available and willing to make health care decisions for the patient has priority over any other person, including any guardian of the person, to act for the patient in all matters covered by the health care agency. (Code 1981, § 31-36-11, enacted by Ga. L. 1990, p. 1101, § 1.)

**31-36-12. Prior agency or act of agent not affected.**

This chapter does not in any way affect or invalidate any health care agency executed or any act of an agent prior to July 1, 1990, or affect any claim, right, or remedy that accrued prior to July 1, 1990. (Code 1981, § 31-36-12, enacted by Ga. L. 1990, p. 1101, § 1.)

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**31-36-13 DURABLE POWER OF ATTORNEY FOR HEALTH CARE 31-36-13****31-36-13. Construction of chapter in relation to Title 53.**

This chapter is wholly independent of the provisions of Title 53, relating to wills, trusts, and the administration of estates, and nothing in this chapter shall be construed to affect in any way the provisions of said Title 53. (Code 1981, § 31-36-13, enacted by Ga. L. 1990, p. 1101, § 1.)

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