ARTICLE 5

Protection of Persons Under Disability and Their Property

Part 1

General Provisions

**SECTION 62‑5‑101.** Definitions and use of terms.

Unless otherwise apparent from the context, in this Code:

(1) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property;

(2) A "protective proceeding" is a proceeding under the provisions of Section 62‑5‑401 to determine if a person is an incapacitated person, or to secure the administration of the estates of incapacitated persons or minors;

(3) A "protected person" is a minor or incapacitated person for whom a conservator has been appointed or other protective order has been made;

(4) A "ward" is a person for whom a guardian has been appointed;

(5) A "guardianship proceeding" is a formal proceeding under the provisions of Part 3 of Article 5 (Section 62‑5‑301, et seq.) to determine if a person is an incapacitated person, or to appoint a guardian for an incapacitated person.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 81; 2010 Act No. 244, Section 24, eff June 7, 2010.

**SECTION 62‑5‑102.** Jurisdiction of subject matter; consolidation of proceedings.

(a) The probate court has jurisdiction over protective proceedings and guardianship proceedings.

(b) When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated.

HISTORY: 1986 Act No. 539, Section 1; 1988 Act No. 659, Section 5.

**SECTION 62‑5‑103.** Facility of payment or delivery.

A person under a duty to pay or deliver money or personal property to a minor or incapacitated person may perform this duty in amounts not exceeding ten thousand dollars each year, by paying or delivering the money or property to:

(1) a person having the care and custody of the minor or incapacitated person with whom the minor or incapacitated person resides;

(2) a guardian of the minor or incapacitated person; or

(3) a financial institution incident to a deposit in a federally insured savings account in the sole name of the minor or for the minor under the Uniform Gifts to Minors Act and giving notice of the deposit to the minor.

This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor or incapacitated person are pending. The persons, other than the minor or incapacitated person or a financial institution under (3) above, receiving money or property for a minor or incapacitated person, are obligated to apply the money for the benefit of the minor or incapacitated person with due regard to (i) the size of the estate, the probable duration of the minority or incapacity, and the likelihood that the minor or incapacitated person, at some future time, may be able fully to manage his affairs and his estate; (ii) the accustomed standard of living of the minor or incapacitated person and members of his household; and (iii) other funds or sources used for the support of the minor or incapacitated person, but may not pay themselves except by way of reimbursement for out‑of‑pocket expenses for goods and services necessary for the minor's or incapacitated person's support. Money or other property received on behalf of a minor or incapacitated person may not be used by a person to discharge a legal or customary obligation of support that may exist between that person and the minor or incapacitated person. Excess sums must be preserved for future benefit of the minor or incapacitated person, and a balance not used and property received for the minor or incapacitated person must be turned over to the minor when he attains majority or to the incapacitated person when he is no longer incapacitated. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application of it.

HISTORY: 1986 Act No. 539, Section 1; 1988 Act No. 659, Section 20; 1990 Act No. 521, Section 82; 1997 Act No. 152, Section 20.

**SECTION 62‑5‑104.** Delegation of guardian's powers.

A guardian of an incapacitated person, by a properly executed power of attorney, may delegate to another person, for not more than thirty days, any of his powers regarding care and custody of the incapacitated person.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 65; 1997 Act No. 152, Section 21.

Editor's Note

The Reporter's Comments do not reflect the amendment made by 1997 Act No. 152, Section 21, which changed the time period for a delegation of powers from six months to thirty days.

**SECTION 62‑5‑105.** Director of Department of Mental Health or his designee may act as conservator.

If a patient of a state mental health facility has no legally appointed conservator, the Director of the Department of Mental Health or his designee may receive and accept for the use and benefit of that patient a sum of money, not in excess of the sum of ten thousand dollars in one calendar year, which may be due the patient or trainee by inheritance, gift, pension, or otherwise. The director or his designee may act as conservator for the patient and his endorsement or receipt discharges the obligor for the sum received. Upon receipt of these funds the director or his designee shall use it for the proper maintenance, use, and benefit of the patient or as much of the fund as may be necessary for these purposes. In the event the patient dies leaving an unexpended balance of these funds in the hands of the director or his designee, he shall apply the balance first to the funeral expenses of the patient or trainee, and any balance remaining must be held by the director or his designee for a period of six months, and if he is not within this period, contacted by the personal representative of the deceased patient, the balance in the personal fund account must be applied to the maintenance and medical care account of the deceased patient.

HISTORY: 1986 Act No. 539, Section 1; 1993 Act No. 83, Section 1; 1993 Act No. 181, Section 1611.

**SECTION 62‑5‑106.** Termination of conservatorship.

(A) For purposes of this section, "incapacitated person" has the meaning set forth in Sections 62‑5‑101(1) and 62‑5‑401(2) and does not include a person protected only by reason of his minority.

(B) Notwithstanding another provision of law, neither a guardianship of an incapacitated person established pursuant to Part 3 of this article or a conservatorship or other protective order for an incapacitated person established pursuant to Part 4 of this article terminates only because the ward or protected person attains the age of majority or other benchmark age.

HISTORY: 2008 Act No. 303, Section 1, eff June 11, 2008.

Part 2

Jurisdiction

**SECTION 62‑5‑201.** Jurisdiction of family courts as to minors.

The family courts of this State have jurisdiction over the care, custody, and control of the persons of minors.

HISTORY: 1987 Act No. 171, Section 66.

Part 3

Guardians of Incapacitated Persons

**SECTION 62‑5‑301.** Testamentary appointment of guardian for incapacitated person.

(a) The parent of an incapacitated person may by will appoint a guardian of the incapacitated person. A testamentary appointment by a parent becomes effective when, after having given twenty days prior written notice of intention to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, if prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

(b) The spouse of a married incapacitated person may by will appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given twenty days prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

(c) This State shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(d) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding section of this Part.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑302.** Venue.

The venue for guardianship proceedings for an incapacitated person is in the place where the incapacitated person resides or is present. If the incapacitated person is admitted to an institution pursuant to order of a court of competent jurisdiction, venue is also in the county in which that court sits.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑303.** Procedure for court appointment of a guardian of an incapacitated person.

(a) The incapacitated person or a person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

(b) Upon the filing and service of the summons and the petition the court shall send a visitor to the place where the allegedly incapacitated person resides to observe conditions and report in writing to the court. The court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an attorney to represent him in the proceedings and that attorney shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by two examiners, one of whom shall be a physician appointed by the court who shall submit their reports in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be represented by counsel, to present evidence including testimony by a physician of his own choosing, to cross‑examine witnesses, including the court‑appointed examiners. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 25, eff June 7, 2010.

**SECTION 62‑5‑304.** Order of appointment; alternatives; limitations on guardian's powers.

(A) The court shall exercise the authority conferred in this part so as to encourage the development of maximum self‑reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's mental and adaptive limitations or other conditions warranting the procedure.

(B) The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person. The court, on appropriate findings, may:

(1) treat the petition as one for a protective order under Section 62‑5‑401 and proceed accordingly;

(2) enter another appropriate order; or

(3) dismiss the proceeding.

(C) The court, at the time of appointment or later, on its own motion or on appropriate petition or motion of the incapacitated person or other interested person, may limit the powers of a guardian otherwise conferred by this article and create a limited guardianship. A limitation on the statutory power of a guardian of an incapacitated person must be endorsed on the guardian's letters or, in the case of a guardian by parental or spousal appointment, must be reflected in letters issued at the time a limitation is imposed. Following the same procedure, a limitation may be removed or modified and appropriate letters issued.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 483, Section 1.

**SECTION 62‑5‑305.** Acceptance of appointment; consent to jurisdiction.

By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him by ordinary first class mail at his address as listed in the court records and to his address as then known to the petitioner.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 26, eff June 7, 2010.

**SECTION 62‑5‑306.** Termination of guardianship for incapacitated person.

The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in Section 62‑5‑307. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his liability for prior acts nor his obligation to account for funds and assets of his ward.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑307.** Removal or resignation of guardian; termination of incapacity.

(a) After service of the summons and petition of the ward or any person interested in his welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept his resignation and make any other order which may be appropriate.

(b) An order adjudicating or readjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the ward may make a request for an order from the court that he is no longer incapacitated, and for removal of the guardian. A request for this order may be made by informal letter to the court or judge and any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

(c) Before acting upon any such petition or request, the court shall send a visitor to the residence of the present guardian and to the place where the ward resides or is detained to observe conditions and report in writing to the court. After reviewing the report of the visitor, the court may order termination of the ward's incapacity or a hearing following the procedures set forth in Section 62‑5‑303.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 27, eff June 7, 2010.

**SECTION 62‑5‑308.** Visitor in guardianship proceeding.

A visitor is, with respect to guardianship proceedings, a person who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑309.** Service and notice in guardianship proceedings.

(A) In a proceeding that is properly commenced by filing and service of the summons and petition for the appointment or removal of a guardian of an incapacitated person other than the appointment of a temporary guardian or temporary suspension of a guardian, the following persons must be properly served:

(1) the ward or the person alleged to be incapacitated and his spouse, parents, and adult children;

(2) a person who is serving as his guardian, conservator, or attorney in fact under a durable power of attorney pursuant to Section 62‑5‑501 or who has his care and custody;

(3) if no other person is notified under item (1), at least one of his closest adult relatives, if one can be found.

(B) Notice of hearing must be given as provided in Section 62‑1‑401. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is given by his attorneys or, in proceedings for removal, confirmed in an interview with the visitor, which may be done at any time. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 483, Section 2; 2010 Act No. 244, Section 28, eff June 7, 2010.

**SECTION 62‑5‑310.** Temporary guardians.

(A) If the court makes emergency preliminary findings that:

(1) a physician has certified to the court, orally or in writing, that the person is incapacitated;

(2) no guardian has been appointed previously; and

(3) the welfare of the incapacitated person requires immediate action; then the court, with or without petition or notice, may appoint a temporary guardian for a specified period not to exceed six months in accordance with the priorities set out in Section 62‑5‑311.

(B) If the court makes emergency preliminary findings that:

(1) the appointed guardian or temporary guardian is not effectively performing his duties; and

(2) the welfare of the allegedly incapacitated person requires immediate action, then the court may appoint, with or without petition or notice, a temporary guardian for a specified period not to exceed six months in accordance with the priorities set out in Section 62‑5‑311.

(C)(1) The court may itself exercise the power of temporary guardian, with or without petition or notice, if the court makes emergency preliminary findings that either no person appears to have authority to act on behalf of the incapacitated person or more than one person is authorized to make health care decisions for the incapacitated person, and these authorized persons disagree on whether certain care must be provided and:

(a) the person has been adjudicated as being incapacitated, or a physician has certified to the court, orally or in writing, that the person is incapacitated; and

(b) an emergency exists.

(2) For health care purposes, "emergency" means that a delay caused by (i) further attempts to locate a person authorized to make health care decisions or (ii) proceedings for appointment of a guardian would present a serious threat to the life, health, or bodily integrity of the incapacitated person.

(D) If a temporary guardian is appointed without petition or notice under this section, a hearing to review the appointment must be held after petition and notice and within thirty days after the appointment of the temporary guardian.

(E) A temporary guardian is entitled to the care and custody of the ward and the authority of a permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make reports the court requires. In other respects the provisions of law concerning guardians apply to temporary guardians.

(F) A hearing concerning the need for appointment of a permanent guardian must be a hearing de novo as to all issues before the court.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 483, Section 3; 1997 Act No. 152, Section 22; 2010 Act No. 244, Section 29, eff June 7, 2010.

**SECTION 62‑5‑311.** Who may be guardian; priorities.

(A) Any competent person or a suitable institution may be appointed guardian of an incapacitated person.

(B) Subject to a finding of good cause by the court, persons who are not disqualified have priority for appointment as guardian in the following order:

(1) a person nominated to serve as guardian by the incapacitated person;

(2) an attorney in fact appointed by the incapacitated person pursuant to Section 62‑5‑501, whose authority includes powers relating to the person of the incapacitated person;

(3) the spouse of the incapacitated person. A person who claims to be a common law spouse of the incapacitated person has the burden of proving that status in order to qualify for appointment as a guardian under this provision. A decision by the probate court regarding the status of a common law spouse is for the purpose of guardianship appointment proceedings only and is not binding in any other court of law or in any administrative proceeding;

(4) an adult child of the incapacitated person;

(5) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(6) another relative of the incapacitated person;

(7) a person nominated by the person who is caring for him or paying benefits to him.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 483, Section 4.

**SECTION 62‑5‑312.** General powers and duties of guardian.

(a) A guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court:

(1) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he is entitled to custody of the person of his ward and may establish the ward's place of abode within or without this State.

(2) If entitled to custody of his ward he shall make provision for the care, comfort, and maintenance of his ward and, whenever appropriate, arrange for his training and education. Without regard to custodial rights of the ward's person, he shall take reasonable care of his ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his ward is in need of protection.

(3) A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(4) If no conservator for the estate of the ward has been appointed or if the guardian is also conservator, he may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but, he may not use funds from his ward's estate for room and board or services which he, his spouse, parent, or child have furnished the ward unless a charge for the services and/or room and board is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. He must exercise care to conserve any excess for the ward's needs.

(5) A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule, but at least on an annual basis.

(6) If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this Code, and the guardian must account to the conservator for funds expended.

(b) Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward and is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑313.** Proceedings subsequent to appointment; venue.

(a) The court which appointed the guardian, or in which acceptance of a testamentary appointment was filed, has jurisdiction over resignation, removal, accounting, and other proceedings relating to the guardianship.

(b) If the court which appointed the guardian, or in which acceptance of appointment is filed, being the court in which proceedings subsequent to appointment are commenced, determines that the proceedings more appropriately belong in the court located where the ward resides, the first court shall notify the other court, in this or another state, and after consultation with the other court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed.

HISTORY: 1986 Act No. 539, Section 1.

Part 4

Protection of Property of Persons Under Disability and Minors

**SECTION 62‑5‑401.** Protective proceedings.

After service of the summons and petition and notice of hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(1) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that (i) the person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance; and (ii) the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 30, eff June 7, 2010.

**SECTION 62‑5‑402.** Protective proceedings; jurisdiction of affairs of protected persons.

After the service of the summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has:

(1) exclusive jurisdiction to determine the need for a conservator or other protective order until the proceedings are terminated;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents; and

(3) concurrent jurisdiction to determine the validity of claims for or against the person or estate of the protected person except as limited by Section 62‑5‑433.

HISTORY: 1986 Act No. 539, Section 1; 1988 Act No. 659, Section 6; 2010 Act No. 244, Section 31, eff June 7, 2010.

**SECTION 62‑5‑403.** Venue.

Venue for proceedings under this part is:

(1) In the place in this State where the person to be protected resides whether or not a guardian has been appointed in another place; or

(2) If the person to be protected does not reside in this State, in any place where he has property.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑404.** Original petition for appointment or protective order.

(a) The person to be protected, any person who is interested in his estate, affairs, or welfare, including his parent, guardian, or custodian, or any person who would be adversely affected by lack of effective management of his property and affairs may petition for the appointment of a conservator or for other appropriate protective order.

(b) The petition shall set forth to the extent known, the interest of the petitioner; the name, age, residence, and address of the person to be protected; the name and address of his guardian, if any; the name and address of his nearest relative known to the petitioner; a general statement of his property with an estimate of the value of the property, including any compensation, insurance, pension, or allowance to which he is entitled; and the reason why appointment of a conservator or other protective order is necessary. If the appointment of a conservator is requested, the petition also shall set forth the name and address of the person whose appointment is sought and the basis of his priority for appointment. The petition shall set forth whether the person to be protected has been rated incapable of handling his estate and monies on examination by the VA and, if so, shall state the name and address of the person to be notified on behalf of the VA.

HISTORY: 1986 Act No. 539, Section 1; 2016 Act No. 278 (S.777), Section 3, eff June 9, 2016.

**SECTION 62‑5‑405.** Service of summons and petition; notice of hearing; waiver of notice by person to be protected.

(a) After filing of the summons and the petition for appointment of a conservator or other protective order, the person to be protected must be served personally with the summons and petition. The following persons also must be properly served: the spouse and the adult children of the person to be protected, or if none, his parents or nearest adult relatives if there are no parents, and other persons as the court may direct.

(b) Notice of hearing on a petition for appointment of a conservator or other initial protective order, and of a subsequent hearing, must be given to the person to be protected, to a person who has filed a request for notice under Section 62‑5‑406, to interested persons, and to other persons as the court may direct. Notice must be given pursuant to Section 62‑1‑401. Waiver of notice of hearing by the person to be protected is not effective unless he attends the hearing or waiver of notice is given by his attorney.

(c) In addition to the requirements of subsections (a) and (b), if the petition is for the purpose of receiving benefits from the VA and is not brought by or on behalf of the VA, service must be effected upon the VA and notice of the hearing must be given to the VA.

HISTORY: 1986 Act No. 539, Section 1; 1997 Act No. 152, Section 23; 2010 Act No. 244, Section 32, eff June 7, 2010; 2016 Act No. 278 (S.777), Section 4, eff June 9, 2016.

**SECTION 62‑5‑406.** Protective proceedings; request for notice; interested person.

Any interested person who desires to be notified before any order is made in a protective proceeding may file with the court a request for notice subsequent to payment of any fee required by statute or court rule. The clerk shall mail a copy of the request to the conservator if one has been appointed. A request is not effective unless it contains a statement showing the interest of the person making it and his address, or that of his attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

HISTORY: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 67.

**SECTION 62‑5‑407.** Procedure concerning hearing and order on original petition.

(a) Upon the filing of a summons and petition for appointment of a conservator or other protective order because of minority, and after service of the summons and the petition, the court may set a date for hearing on the matters alleged in the petition. If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the choice of the minor if fourteen years of age or older. A lawyer appointed by the court to represent a minor has the powers and duties of a guardian ad litem. If the minor already has an attorney, that attorney shall act as his guardian ad litem.

(b) Upon the filing of a summons and petition for appointment of a conservator or other protective order for reasons other than minority, and after service of the summons and the petition, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the protected person already has representation by an attorney, that attorney shall act as his guardian ad litem. Except in cases governed by Section 62‑5‑436 relating to benefits from the VA, if the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court shall direct that the person to be protected be examined by one or more physicians designated by the court, preferably physicians who are not connected with an institution in which the person is a patient or is detained.

(c) After hearing, upon finding that a basis for the appointment of a conservator or other protective order has been established, the court shall make an appointment or other appropriate protective order.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 33, eff June 7, 2010; 2016 Act No. 278 (S.777), Section 5, eff June 9, 2016.

**SECTION 62‑5‑408.** Permissible court orders.

The court has the following powers which may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing upon such notice by the court as is reasonable under the circumstances, and if the petition requests temporary relief, the court has the power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents; however, notice of such actions of the court shall be given to interested parties as soon thereafter as practicable.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor which are or might be necessary for the best interests of the minor, his family, and members of his household.

(3)(a) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and of his estate and fulfillment of his legal obligations of support of dependents, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. These powers include, but are not limited to, the power to:

(i) make gifts as the court, in its discretion, believes would be made by the person if he were competent;

(ii) convey or release the person's contingent and expectant interests in property including material property rights and any right of survivorship incident to joint tenancy;

(iii) exercise or release the person's powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment;

(iv) enter into contracts;

(v) create or amend revocable trusts or create irrevocable trusts of property of the estate which may extend beyond the person's disability or life;

(vi) fund trusts;

(vii) exercise options of the disabled person to purchase securities or other property;

(viii) exercise the person's right to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value;

(ix) exercise the person's right to an elective share in the estate of the person's deceased spouse;

(x) renounce any interest by testate or intestate succession or by inter vivos transfer; and

(xi) ratify any such actions taken on the person's behalf.

(b) In order to exercise, or direct the exercise of the court's authority in any powers set forth in item (a), the court must entertain a petition in which the specific relief sought is set forth, the incapacitated person, his known heirs, devisees, donees, and beneficiaries are made parties to the action, and which contains a statement that the person either is incapable of consenting or has consented to the proposed exercise of power.

(c) In exercising the powers set forth in item (b), the court also must inquire into and consider any known lifetime gifts or the estate plan of the person, the terms of any revocable trust of which he is grantor, and any contract, transfer, or joint ownership arrangements with provisions for payment or transfer of benefits or interests at his death to another which he may have originated. In exercising the court's authority set forth in item (b), the court must set forth in the record specific findings upon which it has based its ruling.

(4) An order made pursuant to this section determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person, except to the extent the order affects his estate or affairs.

HISTORY: 1986 Act No. 539, Section 1; 2000 Act No. 398, Section 10.

**SECTION 62‑5‑409.** Protective arrangements and single transactions authorized.

(a) If it is established in a proper proceeding that a basis exists as described in Section 62‑5‑401 for affecting the property and affairs of a person the court, without appointing a conservator, may authorize, direct, or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the protected person. Protective arrangements include, but are not limited to, payment, delivery, deposit, or retention of funds or property, sale, mortgage, lease, or other transfer of property, entry into an annuity contract, a contract for life care, a deposit contract, a contract for training and education, or addition to or establishment of a suitable trust.

(b) When it has been established in a proper proceeding that a basis exists as described in Section 62‑5‑401 for affecting the property and affairs of a person, the court, without appointing a conservator, may authorize, direct, or ratify any contract, trust, or other transaction relating to the protected person's financial affairs or involving his estate if the court determines that the transaction is in the best interests of the protected person.

(c) Before approving a protective arrangement or other transaction under this section, the court shall consider the interests of creditors and dependents of the protected person and, in view of his disability, whether the protected person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑410.** Who may be appointed conservator; priorities.

(a) The court may appoint an individual, or a corporation with general power to serve as trustee, as conservator of the estate of a protected person. The following are entitled to consideration for appointment in the order listed:

(1) a conservator, guardian of property, or other like fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the protected person resides;

(2) an individual or corporation nominated by the protected person if he is fourteen or more years of age and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

(3) an attorney in fact appointed by such protected person pursuant to Section 62‑5‑501;

(4) the spouse of the protected person;

(5) an adult child of the protected person;

(6) a parent of the protected person, or a person nominated by the will of a deceased parent;

(7) any other relative of the protected person;

(8) a person nominated by the person who is caring for him or paying benefits to him.

(b) A person in priorities (1), (4), (5), (6), or (7) may nominate in writing a person to serve in his stead. With respect to persons having equal priority, the court is to select the one who is best qualified of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less priority or no priority.

(c) A probate judge or an employee of the probate court shall not serve as a conservator of an estate of a protected person; however, a probate judge or an employee of the probate court may serve as a conservator of the estate of a family member if such service does not interfere with the proper performance of the probate judge's or the employee's official duties. For purposes of this subsection, "family member" means a spouse, parent, child, brother, sister, niece, nephew, mother‑in‑law, father‑in‑law, son‑in‑law, daughter‑in‑law, grandparent, or grandchild.

HISTORY: 1986 Act No. 539, Section 1; 1995 Act No. 15, Section 4.

**SECTION 62‑5‑411.** Bond.

The court, unless for good cause stated, shall require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the trust according to law and will approve all sureties. If bond is required, the person qualifying shall file a statement under oath with the court indicating his best estimate of the value of the personal estate of the protected person and of the income expected from the personal estate during the next year, and he shall execute and file a bond with the court, or give other suitable security, in an amount not less than the estimate. The court shall determine that the bond is duly executed by a corporate surety, or one or more individual sureties whose performance is secured by pledge of personal property, mortgage on real property, or other adequate security. The court may permit the amount of the bond to be reduced by the value of assets of the estate deposited with a domestic financial institution, as defined in Section 62‑6‑101, in a manner that prevents their unauthorized disposition. Upon application of the conservator or another interested person, or upon the court's own motion, the court may increase or reduce the amount of the bond, release sureties, dispense with security or securities, or permit the substitution of another bond with the same or different sureties. A denial of an application by the court is not an adjudication and does not preclude a formal proceeding.

HISTORY: 1986 Act No. 539, Section 1; 1988 Act No. 659, Section 7; 2010 Act No. 244, Section 34, eff June 7, 2010.

**SECTION 62‑5‑412.** Terms and requirements of bonds.

(a) The following requirements and provisions apply to any bond required under Section 62‑5‑411:

(1) Sureties shall be jointly and severally liable with the conservator and with each other;

(2) By executing an approved bond of a conservator, the surety consents to the jurisdiction of the court which issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator and naming the surety as a party defendant. Notice of any proceeding shall be delivered to the surety or mailed to him by registered or certified mail at his address as listed with the court where the bond is filed and to his address as then known to the petitioner;

(3) After service of a summons and petition by a successor conservator or any interested person, or upon the court's own motion, a proceeding may be initiated against a surety for breach of the obligation of the bond of the conservator;

(4) Subject to applicable statutes of limitation, the bond of the conservator is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligor is barred by adjudication or limitation.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 35, eff June 7, 2010.

**SECTION 62‑5‑413.** Acceptance of appointment; consent to jurisdiction.

By accepting appointment, a conservator submits personally to the jurisdiction of the court in any proceeding relating to the estate that may be instituted by any interested person. Notice of any proceeding shall be delivered to the conservator, or mailed to him by registered or certified mail at his address as listed in the petition for appointment or as thereafter reported to the court and to his address as then known to the petitioner.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑414.** Compensation and expenses.

If not otherwise compensated for services rendered, any visitor, lawyer, physician, conservator, or special conservator appointed in a protective proceeding is entitled to reasonable compensation from the estate, as determined by the court.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑415.** Death, resignation, or removal of conservator.

The court may remove a conservator for good cause, upon notice and hearing, or accept the resignation of a conservator. After his death, resignation, or removal, the court may appoint another conservator. A conservator so appointed succeeds to the title and powers of his predecessor.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑416.** Requests for orders subsequent to appointment; service of petition and summons; denial of application.

(a) Upon filing a petition and summons with the appointing court, a person interested in the welfare of a person for whom a conservator has been appointed may request an order (1) requiring bond or security or additional bond or security, or reducing bond, (2) requiring an accounting for the administration of the trust, (3) directing distribution, (4) removing the conservator and appointing a temporary or successor conservator, or (5) granting other appropriate relief. The petition and summons must be served upon the conservator and other persons as the court may direct.

(b) Upon application to the appointing court, a conservator may request instructions concerning his fiduciary responsibility. A denial of the application by the court is not an adjudication and does not preclude a formal proceeding.

(c) After notice and hearing as the court may direct, the court may give appropriate instructions or make any appropriate order.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 36, eff June 7, 2010.

**SECTION 62‑5‑417.** General duty of conservator.

In the exercise of his powers, a conservator is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by Section 62‑7‑933.

HISTORY: 1986 Act No. 539, Section 1; 2005 Act No. 66, Section 7.

**SECTION 62‑5‑418.** Inventory and records.

Within thirty days after his appointment, every conservator shall prepare and file with the appointing court a complete inventory of the estate of the protected person together with his oath or affirmation that it is complete and accurate so far as he is informed. The court may, for good cause shown, increase the allotted time. The conservator shall provide a copy thereof to the protected person if he can be located, has attained the age of fourteen years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of his administration and exhibit the same on request of any interested person.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑419.** Accounts.

Every conservator shall account to the court for his administration of the trust annually and upon his resignation or removal, and at other times as the court may direct. On termination of the protected person's minority or disability a conservator shall account to the court. Upon the filing and service of summons and petition for approval of accounting, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters shown in connection with it and an order, made upon notice and hearing, allowing a final account adjudicates as to all unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship concerning the matters shown. In connection with an account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in a manner the court may specify.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 37, eff June 7, 2010.

**SECTION 62‑5‑420.** Conservators; title by appointment.

The appointment of a conservator vests in him title as trustee to all property of the protected person, presently held or thereafter acquired, including title to any property theretofore held for the protected person by custodians or attorneys in fact. Neither the appointment of a conservator nor the establishment of a trust in accordance with Title 44, Chapter 6, Article 6, is a transfer or alienation within the meaning of general provisions of any federal or state statute or regulation, insurance policy, pension plan, contract, will, or trust instrument, imposing restrictions upon or penalties for transfer or alienation by the protected person of his rights or interest, but this section does not restrict the ability of persons to make specific provision by contract or dispositive instrument relating to a conservator.

HISTORY: 1986 Act No. 539, Section 1; 1993 Act No. 164, Part II, Section 74B.

**SECTION 62‑5‑421.** Recording of conservator's letters.

Letters of conservatorship transfer all assets of a protected person to the conservator. An order terminating a conservatorship transfers all assets of the estate from the conservator to the protected person or his successors. Letters of conservatorship, and orders terminating conservatorships, shall be filed and recorded in the office where conveyances of real estate are recorded for the county in which the protected person resides and in the other counties where the protected person owns real estate.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑422.** Sale, encumbrance, or transaction involving conflict of interest; voidable; exceptions.

Any sale or encumbrance to a conservator, his spouse, agent, or attorney, or any corporation or trust in which he has a substantial beneficial interest, or any transaction which is affected by a substantial conflict of interest is void unless the transaction is approved by the court after notice to interested persons and others as directed by the court.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑423.** Persons dealing with conservators; protection.

A person who in good faith either assists a conservator or deals with him for value in any transaction other than those requiring a court order as provided in Sections 62‑5‑408 and 62‑5‑422, is protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, except that restrictions on powers of conservators which are endorsed on letters as provided in Section 62‑5‑426 are effective as to third persons. A person is not bound to see to the proper application of estate assets paid or delivered to a conservator. The protection here expressed extends to instances in which some procedural irregularity or jurisdictional defect occurred in proceedings leading to the issuance of letters. The protection here expressed is not by substitution for that provided by comparable provisions of the laws relating to commercial transactions and laws simplifying transfers of securities by fiduciaries.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑424.** Powers of conservator in administration.

(A) A conservator has power without court authorization or confirmation to invest and reinvest funds of the estate as would a trustee.

(B) A conservator, acting reasonably in efforts to accomplish the purpose for which he was appointed, may act without court authorization or confirmation, to:

(1) collect, hold, and retain assets of the estate including land in another state, until, in his judgment, disposition of the assets should be made, and the assets may be retained even though they include an asset in which he personally is interested;

(2) receive additions to the estate;

(3) invest and reinvest estate assets in accordance with subsection (A);

(4) deposit estate funds in a bank including a bank operated by the conservator;

(5) make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish improvement, to raze existing or erect new party‑walls or buildings;

(6) vote a security, in person or by general or limited proxy;

(7) pay calls, assessments, and other sums chargeable or accruing against or on account of securities;

(8) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise whose stock or shares are publicly held;

(9) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for an act of the nominee in connection with the stock so held;

(10) insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;

(11) borrow money to be repaid from estate assets or otherwise; advance money for the protection of the estate or the protected person, and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of estate assets and the conservator has a lien on the estate as against the protected person for advances so made;

(12) pay or contest a claim except as limited by Section 62‑5‑433; settle a claim by or against the estate of the protected person by compromise, arbitration, or otherwise except as limited by Section 62‑5‑433; and release, in whole or in part, a claim belonging to the estate to the extent that the claim is uncollectible;

(13) pay taxes, assessments, and other expenses incurred in the collection, care, administration, and protection of the estate;

(14) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(15) pay a sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person;

(16) employ persons, including attorneys, auditors, investment advisors, or agents even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform an act of administration, whether or not discretionary;

(17) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and

(18) execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

(C) A conservator acting reasonably in efforts to accomplish the purpose for which he was appointed may act with court approval to:

(1) continue or participate in the operation of any unincorporated business or other enterprise;

(2) acquire an undivided interest in an estate asset in which the conservator, in a fiduciary capacity, holds an undivided interest;

(3) acquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(4) subdivide, develop, or dedicate land to public use; to make or obtain the vacation of plats and adjust boundaries; to adjust differences in valuation on exchange or to partition by giving or receiving considerations; and to dedicate easements to public use without consideration;

(5) enter into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the conservatorship;

(6) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(7) grant an option involving disposition of an estate asset, to take an option for the acquisition of any asset;

(8) undertake another act considered necessary or reasonable by the conservator and the court for the preservation and management of the estate;

(9) make gifts to charitable organizations and for other religious, charitable, eleemosynary, or educational purposes which are tax deductible as the protected person might have been expected to make, in amounts which do not exceed in total for any year twenty percent of the income from the estate, if and only if the estate is ample to provide for the purposes implicit in the distributions authorized by Section 62‑5‑425;

(10) encumber, mortgage, or pledge an asset for a term extending within or beyond the term of the conservatorship.

HISTORY: 1986 Act No. 539, Section 1; 1988 Act No. 659, Section 8; 1997 Act No. 152, Section 24.

**SECTION 62‑5‑425.** Distributive duties and powers of conservator.

(a) A conservator may expend or distribute sums from the principal of the estate without court authorization or confirmation for the support, education, care, or benefit of the protected person and his dependents in accordance with the following principles:

(1) The conservator is to consider recommendations relating to the appropriate standard of support, education, and benefit for the protected person made by a parent or guardian, if any. He may not be surcharged for sums paid to persons or organizations actually furnishing support, education, or care to the protected person pursuant to the recommendations of a parent or guardian of the protected person unless he knows that the parent or guardian is deriving personal financial benefit therefrom, including relief from any personal duty of support, or unless the recommendations are clearly not in the best interests of the protected person.

(2) The conservator is to expend or distribute sums reasonably necessary for the support, education, care, or benefit of the protected person with due regard to (i) the size of the estate, the probable duration of the conservatorship and the likelihood that the protected person, at some future time, may be fully able to manage his affairs and the estate which has been conserved for him; (ii) the accustomed standard of living of the protected person and members of his household; (iii) other funds or sources used for the support of the protected person.

(3) The conservator may expend funds of the estate for the support of persons legally dependent on the protected person.

(4) Funds expended under this subsection may be paid by the conservator to any person, including the protected person, to reimburse for expenditures which the conservator might have made, or in advance for services to be rendered to the protected person when it is reasonable to expect that they will be performed and where advance payments are customary or reasonably necessary under the circumstances.

(b) When a minor who has not been adjudged disabled under Section 62‑5‑401(2) attains his majority or is emancipated, his conservator, after meeting all prior claims and expenses of administration, shall pay over and distribute all funds and properties to the former protected person as soon as possible. An individual under the age of eighteen who is also married shall remain a minor for purposes of this subsection until attaining majority or emancipation.

(c)(1) When the conservator is satisfied that a protected person's disability (other than minority) has ceased, then he shall petition the court, and after determination by the court that the disability has ceased in accordance with Section 62‑5‑430, the conservator, after meeting all prior claims and expenses of administration shall pay over and distribute all funds and properties to the former protected person as soon as possible.

(2) When the conservator is satisfied that a protected person's estate has a value of less than five thousand dollars, then he may petition the court, and after determination by the court that the protected person's estate has a value of less than five thousand dollars, the court in its discretion may terminate the conservatorship and order the conservator, after meeting all prior claims and expenses of administration, to pay over and distribute all funds and properties to or for the protected person as soon as possible and in accordance with Section 62‑5‑103.

(d) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into his possession, inform the executor or a beneficiary named therein that he has done so, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto. If after thirty days from the death of the protected person no other person has been appointed personal representative and no application or petition for appointment is before the court, the conservator may apply to exercise the powers and duties of a personal representative so that he may proceed to administer and distribute the decedent's estate. Upon application for an order granting the powers of a personal representative to a conservator, after notice to any person demanding notice under Section 62‑3‑204 and to any person nominated executor in any will of which the applicant is aware, the court may order the conferral of the power upon determining that there is no objection, and endorse the letters of the conservator to note that the formerly protected person is deceased and that the conservator has acquired all of the powers and duties of a personal representative. The making and entry of an order under this section shall have the effect of an order of appointment of a personal representative as provided in Section 62‑3‑308 and Parts 6 through 10 of Article 3 [Sections 62‑3‑601 et seq. through Sections 62‑3‑1001 et seq.] except that estate in the name of the conservator, after administration, may be distributed to the decedent's successors without prior retransfer to the conservator as personal representative.

(e) A person shall not be disqualified as an executor of a deceased protected person solely by reason of his having been appointed and acting conservator of that protected person.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 521, Section 83; 1997 Act No. 152, Section 25.

**SECTION 62‑5‑426.** Enlargement or limitation of powers of conservator.

The court may, at the time of appointment or later, limit the powers of a conservator otherwise conferred by Sections 62‑5‑424 and 62‑5‑425, or previously conferred by the court, and may at any time relieve him of any limitation. If the court limits any power conferred on the conservator by Section 62‑5‑424 or Section 62‑5‑425, the limitation shall be endorsed upon his letters of appointment and upon any certificate evidencing his appointment.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑427.** Preservation of estate plan.

In investing the estate, and in selecting assets of the estate for distribution under subsections (a) and (b) of Section 62‑5‑425, in utilizing powers of revocation or withdrawal available for the support of the protected person, and exercisable by the conservator or the court, the conservator and the court should take into account any known estate plan of the protected person, any revocable trust of which he is settlor, and any contract, transfer, or joint ownership arrangement with provisions for payment or transfer of benefits or interests at his death to another or others which he may have originated.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑428.** Claims against protected person; enforcement.

(a)(1) A conservator must pay from the estate all just claims against the estate and against the protected person arising before or after the conservatorship upon their presentation and allowance. A claim may be presented by either of the following methods:

(i) the claimant may deliver or mail to the conservator a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed;

(ii) the claimant may file a written statement of the claim, in the form prescribed by rule, with the clerk of court and deliver or mail a copy of the statement to the conservator.

(2) A claim is considered presented on the first to occur of receipt of the written statement of claim by the conservator or the filing of the claim with the court. Every claim which is disallowed in whole or part by the conservator is barred so far as not allowed unless the claimant files and properly serves a summons and petition for allowance in the court or commences a proceeding against the conservator not later than thirty days after the mailing of the notice of disallowance or partial disallowance if the notice warns the claimant of the impending bar. The presentation of a claim tolls any statute of limitation relating to the claim until thirty days after its disallowance.

(b) A claimant whose claim has not been paid may petition, by service of the summons and the petition, the court for determination of his claim at any time before it is barred by the applicable statute of limitation, and, upon due proof, procure an order for its allowance and payment from the estate. If a proceeding is initiated against a protected person, the moving party must give notice of the proceeding to the conservator if the outcome is to constitute a claim against the estate.

(c) If it appears that the estate in conservatorship is likely to be exhausted before all existing claims are paid, preference must be given to prior claims for the care, maintenance, and education of the protected person or his dependents and existing claims for expenses of administration.

HISTORY: 1986 Act No. 539, Section 1; 1997 Act No. 152, Section 26; 2010 Act No. 244, Section 38, eff June 7, 2010.

**SECTION 62‑5‑429.** Individual liability of conservator.

(a) Unless otherwise provided in the contract, a conservator is not individually liable on a contract properly entered into in his fiduciary capacity in the court of administration of the estate unless he fails to reveal his representative capacity and identify the estate in the contract.

(b) The conservator is individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration of the estate only if he is personally at fault.

(c) Claims based on contracts entered into by a conservator in his fiduciary capacity, on obligations arising from ownership or control of the estate, or on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in his fiduciary capacity, whether or not the conservator is individually liable therefor.

(d) Any question of liability between the estate and the conservator individually may be determined in a proceeding for accounting, surcharge, or indemnification, or other appropriate proceeding or action.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑430.** Proceeding to terminate conservatorship; application; notice.

(A) The protected person, the conservator, or any other interested person, by service of a summons and petition, may request that the court terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order. The court, upon determining after notice and hearing, that the disability of the protected person has ceased, may terminate the conservatorship.

(B) The protected person, his personal representative, or the conservator may make application for the termination of the conservatorship when the protected person has attained his majority or if the protected person is deceased. Notice must be given to those persons as the court may direct.

HISTORY: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 39, eff June 7, 2010.

**SECTION 62‑5‑431.** Payment of debt and delivery of property to foreign conservator without local proceedings.

Any person indebted to a protected person, or having possession of property of or an instrument evidencing a debt, stock, or chose in action belonging to a protected person may pay or deliver to a conservator, guardian of the estate, or other like fiduciary appointed by a court of the state of residence of the protected person, upon being presented with proof of his appointment and an affidavit made by him or on his behalf stating:

(1) that no protective proceeding relating to the protected person is pending in this State;

(2) that the foreign conservator is entitled to payment or to receive delivery.

If the person to whom the affidavit is presented is not aware of any protective proceeding pending in this State, payment or delivery in response to the demand and affidavit discharges the debtor or possessor.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑432.** Foreign conservator; proof of authority; bond; powers.

If no local conservator has been appointed and no petition in a protective proceeding is pending in this State, then, except as provided in Section 62‑5‑431, a domiciliary foreign conservator may file with the court in this State in all counties in which property belonging to the protected person is located, authenticated copies of his appointment and of any official bond he has given. Thereafter, he may exercise as to assets in this State all powers of a local conservator and maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑433.** Definitions; procedures for settlement of claims in favor of or against minors or incapacitated persons.

(A)(1) For purposes of this section and for any claim exceeding twenty‑five thousand dollars in favor of or against any minor or incapacitated person, "court" means the circuit court of the county in which the minor or incapacitated person resides or the circuit court in the county in which the suit is pending. For purposes of this section and for any claim not exceeding twenty‑five thousand dollars in favor of or against any minor or incapacitated person, "court" means either the circuit court or the probate court of the county in which the minor or incapacitated person resides or the circuit court or probate court in the county in which the suit is pending.

(2) "Claim" means the net or actual amount accruing to or paid by the minor or incapacitated person as a result of the settlement.

(3) "Petitioner" means either a conservator appointed by the probate court for the minor or incapacitated person or the guardian or guardian ad litem of the minor or incapacitated person if a conservator has not been appointed.

(B) The settlement of any claim over twenty‑five thousand dollars in favor of or against any minor or incapacitated person for the payment of money or the possession of personal property must be effected on his behalf in the following manner:

(1) The petitioner must file with the court a verified petition setting forth all of the pertinent facts concerning the claim, payment, attorney's fees, and expenses, if any, and the reasons why, in the opinion of the petitioner, the proposed settlement should be approved. For all claims that exceed twenty‑five thousand dollars, the verified petition must include a statement by the petitioner that, in his opinion, the proposed settlement is in the best interests of the minor or incapacitated person.

(2) If, upon consideration of the petition and after hearing the testimony as it may require concerning the matter, the court concludes that the proposed settlement is proper and in the best interests of the minor or incapacitated person, the court shall issue its order approving the settlement and authorizing the petitioner to consummate it and, if the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, to receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated person.

(3) The order authorizing the settlement must require that payment or delivery of the money or personal property be made through the conservator. If a conservator has not been appointed, the petitioner shall, upon receiving the money or personal property, pay and deliver it to the court pending the appointment and qualification of a duly appointed conservator. If a party subject to the court order fails or refuses to pay the money or deliver the personal property as required by the order, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.

(C) The settlement of any claim that does not exceed twenty‑five thousand dollars in favor of or against a minor or incapacitated person for the payment of money or the possession of personal property may be effected in any of the following manners:

(1) If a conservator has been appointed, he may settle the claim without court authorization or confirmation, as provided in Section 62‑5‑424, or he may petition the court for approval, as provided in items (1), (2), and (3) of subsection (B). If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, the conservator shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated person.

(2) If a conservator has not been appointed, the guardian or guardian ad litem must petition the court for approval of the settlement, as provided in items (1) and (2) of subsection (B), and without the appointment of a conservator. The payment or delivery of money or personal property to or for a minor or incapacitated person must be made in accordance with Section 62‑5‑103. If a party subject to the court order fails or refuses to pay the money or deliver the personal property, as required by the order and in accordance with Section 62‑5‑103, he is liable and punishable as for contempt of court, but failure or refusal does not affect the validity or conclusiveness of the settlement.

(D) The settlement of any claim that does not exceed two thousand five hundred dollars in favor of or against any minor or incapacitated person for the payment of money or the possession of personal property may be effected by the parent or guardian of the minor or incapacitated person without court approval of the settlement and without the appointment of a conservator. If the settlement requires the payment of money or the delivery of personal property for the benefit of the minor or incapacitated person, the parent or guardian shall receive the money or personal property and execute a proper receipt and release or covenant not to sue therefor, which is binding upon the minor or incapacitated person. The payment or delivery of money or personal property to or for a minor or incapacitated person must be made in accordance with Section 62‑5‑103.

HISTORY: 1988 Act No. 659, Section 9; 1990 Act No. 521, Sections 84‑86; 2000 Act No. 398, Section 1.

**SECTION 62‑5‑434.** Settlement of claims involving minors completed between July 1, 1987, and September 24, 1987, presumed valid.

The settlement of any claim involving a minor completed between July 1, 1987, and September 24, 1987, is presumed facially valid whether effectuated with or without court approval.

HISTORY: 1988 Act No. 659, Section 21.

**SECTION 62‑5‑435.** Liability for approving or completing settlement.

Neither the court which may have approved a settlement nor a person who completed the settlement of a minor's claim but did not seek court approval during this time period is liable for their good faith exercise of discretion in approving or completing the settlement.

HISTORY: 1988 Act No. 659, Section 21(A) (last sentence).

Editor's Note

The first three sentences of Section 21(A) of 1988 Act No. 659, provide as follows:

"Provisions of the South Carolina Probate Code which became effective July 1, 1987, superceded the minor settlement provisions of former Sections 15‑71‑10 through 15‑71‑30 of the 1976 Code which had required court approval of the settlement. On September 24, 1987, the South Carolina Supreme Court issued an administrative order reinstituting a court approval procedure for the settlement of minor claims. It is the intent of the General Assembly that the settlement of any claim involving a minor completed between July 1, 1987, and September 24, 1987, is presumed facially valid, and the General Assembly has therefore determined to enact the provisions of Section 62‑5‑434 herein."

**SECTION 62‑5‑436.** Payment of benefits from U.S. Department of Veterans Affairs to a minor or an incapacitated person; definitions.

(a) For purposes of this section:

(1) "Estate" and "income" include only monies received from the VA, all real and personal property acquired in whole or in part with these monies, and all earnings, interest, and profits.

(2) "Benefits" means all monies payable by the United States through the VA.

(3) "Secretary" means the Secretary of the United States Department of Veterans Affairs (VA) or his successor.

(4) "Protected person" means a beneficiary of the VA.

(5) "Conservator" has the same meaning as provided in Section 62‑1‑201 but only as to benefits from the VA.

(b) Whenever, pursuant to a law of the United States or regulation of the VA, the Secretary requires that a conservator be appointed for a protected person before payment of benefits, the appointment must be made in the manner provided in this part, except to the extent this section requires otherwise. The petition shall show that the person to be protected has been rated incapable of handling his estate and monies on examination by the VA in accordance with the laws and regulations governing the VA.

(c) When a petition is filed for the appointment of a conservator and a certificate of the Secretary or his representative is filed setting forth the fact that the appointment of a conservator is a condition precedent to the payment of benefits due the protected person by the VA, the certificate is prima facie evidence of the necessity for the appointment and no examiner's report is required.

(d) Except as provided or as otherwise permitted by the VA, a person may not serve as conservator of a protected person if the proposed conservator at that time is acting simultaneously as conservator for five protected persons. Upon presentation of a petition by an attorney for the VA alleging that a person is serving simultaneously as a conservator for more than five protected persons and requesting that person's termination as a conservator for that reason, upon proof substantiating the petition, the court shall restrain that person from acting as a conservator for the affected protected person and shall require a final accounting from the conservator. After the appointment of a successor conservator if one is warranted under the circumstances, the court shall terminate the appointment of the person as conservator in all requested cases. The limitations of this section do not apply when the conservator is a bank or trust company.

(e) The conservator shall file an inventory, accountings, exhibits or other pleadings with the court and with the VA as provided by law or VA regulation. The conservator is required to furnish the inventory and accountings to the VA.

(f) Every conservator shall invest the surplus funds in his protected person's estate in securities, or otherwise, as allowed by law, and in which the conservator has no interest. These funds may be invested, without prior court authorization, in direct interest‑bearing obligations of this State or of the United States and in obligations in which the interest and principal are both unconditionally guaranteed by the United States Government.

(g) Whenever a copy of a public record is required by the VA to be used in determining the eligibility of a person to participate in benefits made available by the VA, the official charged with the custody of the public record shall provide a certified copy of the record, without charge, to an applicant for the benefits, a person acting on his behalf, or a representative of the VA.

(h) With regard to a minor or a mentally incompetent person to whom, or on whose behalf, benefits have been paid or are payable by the VA, the Secretary is and must be a necessary party in a:

(1) proceeding brought for the appointment, confirmation, recognition, or removal of a conservator;

(2) suit or other proceeding, whether formal or informal, arising out of the administration of the person's estate; and

(3) proceeding which is for the removal of the disability of minority or of mental incompetency of the person.

(i) In a case or proceeding involving property or funds of a protected person not derived from the VA, the VA is not a necessary party but may be an interested party in the proceedings.

(j) For services as conservator of funds paid from the VA, a conservator may be paid an amount not to exceed five percent of the income of the protected person during any year. If extraordinary services are rendered by a conservator, the court may, upon application of the conservator and notice to the VA, authorize additional compensation payable from the estate of the protected person. No compensation is allowed on the corpus of an estate derived from payments from the VA. The conservator may be allowed reimbursement from the estate of the protected person for reasonable premiums paid to a corporate surety upon the bond furnished by the conservator.

HISTORY: 2016 Act No. 278 (S.777), Section 1, eff June 9, 2016.

Part 5

Powers of Attorney [Effective until January 1, 2017]

**SECTION 62‑5‑501.** When power of attorney not affected by disability.

Section effective until January 1, 2017. See, also, section 62‑5‑501 effective January 1, 2017.

(A) Whenever a principal designates another his attorney in fact by a power of attorney in writing and the writing contains (1) the words "This power of attorney is not affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate", (2) the words "This power of attorney becomes effective upon the physical disability or mental incompetence of the principal", or (3) similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding his physical disability or mental incompetence or either physical disability or mental incompetence, the authority of the attorney in fact is exercisable by him as provided in the power on behalf of the principal notwithstanding later physical disability or mental incompetence of the principal or later uncertainty as to whether the principal is dead or alive. The power may define "physical disability" or "mental incompetence" and may set forth the procedures for determining whether the principal is physically disabled or mentally incompetent. If no definition of mental incompetence or procedures for determining mental incompetence are set forth, and the authority of the attorney in fact relates solely to health care, mental incompetence is to be determined according to the standards and procedures for inability to consent under Section 44‑66‑20(6) of the Adult Health Care Consent Act. The authority of the attorney in fact to act on behalf of the principal must be set forth in the power and may relate to any act, power, duty, right, or obligation which the principal has or may acquire relating to the principal or any matter, transaction, or property, including the power to consent or withhold consent on behalf of the principal to health care. The attorney in fact has a fiduciary relationship with the principal and is accountable and responsible as a fiduciary. All acts done by the attorney in fact pursuant to the power during a period of physical disability or mental incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, legatees, and personal representative as if the principal were alive, mentally competent, and not disabled physically.

(B) An instrument to which this section is applicable also may provide for successor attorneys in fact and provide conditions for their succession, which may include an authorization for the court to appoint a successor, and the succession may occur whether or not the principal then is physically disabled or mentally incompetent. The appointment of an attorney in fact under this section does not prevent a person or his representative from petitioning the court to have a guardian or conservator appointed. Unless the power of attorney provides otherwise, appointment of a guardian terminates all or part of the power of attorney that relates to matters within the scope of the guardianship, and appointment of a conservator terminates all or part of the power of attorney that relates to matters within the scope of the conservatorship.

(C) A power of attorney executed under the provisions of this section must be executed and attested with the same formality and with the same requirements as to witnesses as a will. In addition, the instrument must be recorded in the same manner as a deed in the county where the principal resides at the time the instrument is recorded. After the instrument has been recorded, whether recorded before or after the onset of the principal's physical disability or mental incompetence, it is effective notwithstanding the mental incompetence or physical disability. If the authority of the attorney in fact relates solely to the person of the principal, the instrument is effective without being recorded.

(D) A power of attorney as provided for under this section is valid if:

(1) executed in compliance with this section; or

(2) its execution complies with the law at the time of execution of the jurisdiction where the instrument was executed and it is recorded as required by subsection (C). Notwithstanding the provisions of Section 30‑5‑30, a valid power of attorney as provided for under this section which is executed in another jurisdiction may be recorded as though it complies with the provisions of subsection (C) of this section.

(E) A properly executed durable power of attorney that authorizes an attorney in fact to make health care decisions or other decisions regarding the principal is valid whether or not it was executed after May 14, 1990.

(F)(1) A third person in this State who receives or is presented with a valid power of attorney executed pursuant to this section, and has not received actual written notice of its revocation or termination, must not refuse to honor the power of attorney if it contains the following provision or a substantially similar provision:

"No person who may act in reliance upon the representations of my attorney‑in‑fact for the scope of authority granted to the attorney‑in‑fact shall incur any liability as to me or to my estate as a result of permitting the attorney‑in‑fact to exercise this authority, nor is any such person who deals with my attorney‑in‑fact responsible to determine or ensure the proper application of funds or property."

As used in this subsection, "to honor" a power of attorney means to deal with the attorney‑in‑fact as if the attorney‑in‑fact were the principal, personally present and acting on his own behalf within the scope of the powers granted to the attorney‑in‑fact.

(2) Unless the third person actually has received written notice of the revocation or termination of a valid power of attorney executed in accordance with this section, a third person in this State who receives or is presented with a power of attorney:

(a) does not incur liability to the principal or the principal's estate by reason of acting upon the authority of it or permitting the attorney‑in‑fact to exercise authority;

(b) is not required to inquire whether the attorney‑in‑fact has power to act or is properly exercising the power; or

(c) is not responsible to determine or ensure the proper application of assets, funds, or property belonging to the principal.

(3) A "third person" means an individual, a corporation, an organization, or other legal entity for purposes of this subsection.

(G)(1) An attorney‑in‑fact is entitled to reimbursement for expenses and compensation for services as provided in the power of attorney. In the absence of a provision in the power of attorney regarding reimbursement or compensation, or both:

(a) an attorney‑in‑fact is entitled to reimbursement for all reasonable costs and expenses actually incurred and paid by the attorney‑in‑fact on the principal's behalf;

(b) an attorney‑in‑fact, upon the approval of the probate court, is entitled to reasonable compensation based upon the responsibilities he assumed and the effort he expended; and

(c) if two or more attorneys‑in‑fact are serving together, the compensation paid must be divided by them in a manner as they agree or as determined by a court of competent jurisdiction if they fail to agree.

(2) An interested person may petition a court of competent jurisdiction to review the propriety and reasonableness of payment for reimbursement or compensation to the attorney‑in‑fact, and an attorney‑in‑fact who has received excessive payment may be ordered to make appropriate refunds to the principal.

HISTORY: 1986 Act No. 539, Section 1; 1990 Act No. 483, Section 5; 1990 Act No. 521, Section 104; 1992 Act No. 256, Section 1; 1992 Act No. 306, Sections 5, 6; 1997 Act No. 152, Section 27; 2002 Act No. 362, Section 9; 2010 Act No. 244, Section 40, eff June 7, 2010.

**SECTION 62‑5‑502.** Other powers of attorney not revoked until notice of death or disability.

Section effective until January 1, 2017. See, also, section 62‑5‑502 effective January 1, 2017.

(a) The death, disability, or incompetence of any principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the attorney‑in‑fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees, and personal representatives.

(b) An affidavit, executed by the attorney‑in‑fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(c) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

HISTORY: 1986 Act No. 539, Section 1.

**SECTION 62‑5‑503.** Jurisdiction.

Section effective until January 1, 2017. See, also, section 62‑5‑503 effective January 1, 2017.

The probate court has concurrent jurisdiction with the circuit courts of this State over all subject matter related to the creation, exercise, and termination of powers of attorney governed by the provisions of this Part, including the approval of the sale of real and personal property by an attorney‑in‑fact.

HISTORY: 1990 Act No. 521, Section 87.

**SECTION 62‑5‑504.** Health care power of attorney; definitions; form.

Section effective until January 1, 2017. See, also, section 62‑5‑504 effective January 1, 2017.

(A) As used in this section:

(1) "Agent" or "health care agent" means an individual designated in a health care power of attorney to make health care decisions on behalf of a principal.

(2) "Declaration of a desire for a natural death" or "declaration" means a document executed in accordance with the South Carolina Death with Dignity Act or a similar document executed in accordance with the law of another state.

(3) "Health care" means a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and placement in or removal from a facility that provides these forms of care.

(4) "Health care power of attorney" means a durable power of attorney executed in accordance with this section.

(5) "Health care provider" means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this State to administer health care.

(6) "Life‑sustaining procedure" means a medical procedure or intervention which serves only to prolong the dying process. Life‑sustaining procedures do not include the administration of medication or other treatment for comfort care or alleviation of pain. The principal shall indicate in the health care power of attorney whether the provision of nutrition and hydration through medically or surgically implanted tubes is desired.

(7) "Permanent unconsciousness" means a medical diagnosis, consistent with accepted standards of medical practice, that a person is in a persistent vegetative state or some other irreversible condition in which the person has no neocortical functioning, but only involuntary vegetative or primitive reflex functions controlled by the brain stem.

(8) "Nursing care provider" means a nursing care facility or an employee of the facility.

(9) "Principal" means an individual who executes a health care power of attorney. A principal must be eighteen years of age or older and of sound mind.

(10) "Separated" means that the principal and his or her spouse are separated pursuant to one of the following:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement;

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.

(B)(1) A health care power of attorney is a durable power of attorney pursuant to Section 62‑5‑501. Sections that refer to a durable power of attorney or judicial interpretations of the law relating to durable powers of attorney apply to a health care power of attorney to the extent that they are not inconsistent with this section.

(2) This section does not affect the right of a person to execute a durable power of attorney relating to health care pursuant to other provisions of law but which does not conform to the requirements of this section. If a durable power of attorney for health care executed under Section 62‑5‑501 or under the laws of another state does not conform to the requirements of this section, the provisions of this section do not apply to it. However, a court is not precluded from determining that the law applicable to nonconforming durable powers of attorney for health care is the same as the law set forth in this section for health care powers of attorney.

(3) To the extent not inconsistent with this section, the provisions of the Adult Health Care Consent Act apply to the making of decisions by a health care agent and the implementation of those decisions by health care providers.

(4) In determining the effectiveness of a health care power of attorney, mental incompetence is to be determined according to the standards and procedures for inability to consent under Section 44‑66‑20(6), except that certification of mental incompetence by the agent may be substituted for certification by a second physician. If the certifying physician states that the principal's mental incompetence precludes the principal from making all health care decisions or all decisions concerning certain categories of health care, and that the principal's mental incompetence is permanent or of extended duration, no further certification is necessary in regard to the stated categories of health care decisions during the stated duration of mental incompetence unless the agent or the attending physician believes the principal may have regained capacity.

(C)(1) A health care power of attorney must:

(a) be substantially in the form set forth in subsection (D) of this section;

(b) be dated and signed by the principal or in the principal's name by another person in the principal's presence and by his direction;

(c) be signed by at least two persons, each of whom witnessed either the signing of the health care power of attorney or the principal's acknowledgment of his signature on the health care power of attorney. Each witness must state in an affidavit as set forth in subsection (D) of this section that, at the time of the execution of the health care power of attorney, to the extent the witness has knowledge, the witness is not related to the principal by blood, marriage, or adoption, either as a spouse, lineal ancestor, descendant of the parents of the principal, or spouse of any of them; not directly financially responsible for the principal's medical care; not entitled to any portion of the principal's estate upon his decease under a will of the principal then existing or as an heir by intestate succession; not a beneficiary of a life insurance policy of the principal; and not appointed as health care agent or successor health care agent in the health care power of attorney; and that no more than one witness is an employee of a health facility in which the principal is a patient, no witness is the attending physician or an employee of the attending physician, or no witness has a claim against the principal's estate upon his decease;

(d) state the name and address of the agent. A health care agent must be an individual who is eighteen years of age or older and of sound mind. A health care agent may not be a health care provider, or an employee of a provider, with whom the principal has a provider‑patient relationship at the time the health care power of attorney is executed, or an employee of a nursing care facility in which the principal resides, or a spouse of the health care provider or employee, unless the health care provider, employee, or spouse is a relative of the principal.

(2) The validity of a health care power of attorney is not affected by the principal's failure to initial any of the choices provided in Section 4, 6, or 7 of the Health Care Power of Attorney form or to name successor agents. If the principal fails to indicate either of the statements in Section 7 concerning provision of artificial nutrition and hydration, the agent does not have authority to direct that nutrition and hydration necessary for comfort care or alleviation of pain be withheld or withdrawn.

(D) A health care power of attorney executed on or after January 1, 2007 must be substantially in the following form:

INFORMATION ABOUT THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

1. THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISION FOR YOURSELF. THIS POWER INCLUDES THE POWER TO MAKE DECISIONS ABOUT LIFE‑SUSTAINING TREATMENT. UNLESS YOU STATE OTHERWISE, YOUR AGENT WILL HAVE THE SAME AUTHORITY TO MAKE DECISIONS ABOUT YOUR HEALTH CARE AS YOU WOULD HAVE.

2. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENTS OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TREATMENT YOU DO NOT DESIRE OR TREATMENT YOU WANT TO BE SURE YOU RECEIVE. YOUR AGENT WILL BE OBLIGATED TO FOLLOW YOUR INSTRUCTIONS WHEN MAKING DECISIONS ON YOUR BEHALF. YOU MAY ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE TO COMPLETE THE STATEMENT.

3. AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.

4. YOU HAVE THE RIGHT TO REVOKE THIS DOCUMENT, AND TERMINATE YOUR AGENT'S AUTHORITY, BY INFORMING EITHER YOUR AGENT OR YOUR HEALTH CARE PROVIDER ORALLY OR IN WRITING.

5. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.

6. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS TWO PERSONS SIGN AS WITNESSES. EACH OF THESE PERSONS MUST EITHER WITNESS YOUR SIGNING OF THE POWER OF ATTORNEY OR WITNESS YOUR ACKNOWLEDGMENT THAT THE SIGNATURE ON THE POWER OF ATTORNEY IS YOURS.

THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

A. YOUR SPOUSE, YOUR CHILDREN, GRANDCHILDREN, AND OTHER LINEAL DESCENDANTS; YOUR PARENTS, GRANDPARENTS, AND OTHER LINEAL ANCESTORS; YOUR SIBLINGS AND THEIR LINEAL DESCENDANTS; OR A SPOUSE OF ANY OF THESE PERSONS.

B. A PERSON WHO IS DIRECTLY FINANCIALLY RESPONSIBLE FOR YOUR MEDICAL CARE.

C. A PERSON WHO IS NAMED IN YOUR WILL, OR, IF YOU HAVE NO WILL, WHO WOULD INHERIT YOUR PROPERTY BY INTESTATE SUCCESSION.

D. A BENEFICIARY OF A LIFE INSURANCE POLICY ON YOUR LIFE.

E. THE PERSONS NAMED IN THE HEALTH CARE POWER OF ATTORNEY AS YOUR AGENT OR SUCCESSOR AGENT.

F. YOUR PHYSICIAN OR AN EMPLOYEE OF YOUR PHYSICIAN.

G. ANY PERSON WHO WOULD HAVE A CLAIM AGAINST ANY PORTION OF YOUR ESTATE (PERSONS TO WHOM YOU OWE MONEY).

IF YOU ARE A PATIENT IN A HEALTH FACILITY, NO MORE THAN ONE WITNESS MAY BE AN EMPLOYEE OF THAT FACILITY.

7. YOUR AGENT MUST BE A PERSON WHO IS 18 YEARS OLD OR OLDER AND OF SOUND MIND. IT MAY NOT BE YOUR DOCTOR OR ANY OTHER HEALTH CARE PROVIDER THAT IS NOW PROVIDING YOU WITH TREATMENT; OR AN EMPLOYEE OF YOUR DOCTOR OR PROVIDER; OR A SPOUSE OF THE DOCTOR, PROVIDER, OR EMPLOYEE; UNLESS THE PERSON IS A RELATIVE OF YOURS.

8. YOU SHOULD INFORM THE PERSON THAT YOU WANT HIM OR HER TO BE YOUR HEALTH CARE AGENT. YOU SHOULD DISCUSS THIS DOCUMENT WITH YOUR AGENT AND YOUR PHYSICIAN AND GIVE EACH A SIGNED COPY. IF YOU ARE IN A HEALTH CARE FACILITY OR A NURSING CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.

HEALTH CARE POWER OF ATTORNEY

(S.C. STATUTORY FORM)

1. DESIGNATION OF HEALTH CARE AGENT

I, \_\_\_\_\_\_\_\_\_\_, hereby appoint:

(Principal)

(Agent's Name) \_

(Agent's Address) \_

Telephone: home: \_\_\_\_\_\_\_\_\_\_ work: \_\_\_\_\_\_\_\_\_\_ mobile: \_\_\_\_\_\_ as my agent to make health care decisions for me as authorized in this document.

Successor Agent: If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named:

a. First Alternate Agent:

Address: \_

Telephone: home: \_\_\_\_\_ work: \_\_\_\_\_ mobile: \_\_\_\_

b. Second Alternate Agent:

Address: \_

Telephone: home: \_\_\_\_\_ work: \_\_\_\_\_ mobile: \_\_\_\_

Unavailability of Agent(s): If at any relevant time the agent or successor agents named here are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence, except as provided in Paragraph 3 below.

3. HIPAA AUTHORIZATION

When considering or making health care decisions for me, all individually identifiable health information and medical records shall be released without restriction to my health care agent(s) and/or my alternate health care agent(s) named above including, but not limited to, (i) diagnostic, treatment, other health care, and related insurance and financial records and information associated with any past, present, or future physical or mental health condition including, but not limited to, diagnosis or treatment of HIV/AIDS, sexually transmitted disease(s), mental illness, and/or drug or alcohol abuse and (ii) any written opinion relating to my health that such health care agent(s) and/or alternate health care agent(s) may have requested. Without limiting the generality of the foregoing, this release authority applies to all health information and medical records governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 USC 1320d and 45 CFR 160‑164; is effective whether or not I am mentally competent; has no expiration date; and shall terminate only in the event that I revoke the authority in writing and deliver it to my health care provider.

4. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by the provisions specified below, my agent is authorized as follows:

A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation.

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though such use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death.

C. To authorize my admission to or discharge, even against medical advice, from any hospital, nursing care facility, or similar facility or service.

D. To take any other action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting any waiver or release from liability required by any hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

E. The powers granted above do not include the following powers or are subject to the following rules or limitations:

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5. ORGAN DONATION (INITIAL ONLY ONE)

My agent may \_\_\_; may not \_\_\_ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

6. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

7. STATEMENT OF DESIRES CONCERNING LIFE‑SUSTAINING TREATMENT

With respect to any Life‑Sustaining Treatment, I direct the following:

(INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS)

(1) \_\_\_ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life‑sustaining 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, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life‑sustaining treatment.

OR

(2) \_\_\_ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life‑sustaining treatment:

a. if I have a condition that is incurable or irreversible and, without the administration of life‑sustaining procedures, expected to result in death within a relatively short period of time; or

b. if I am in a state of permanent unconsciousness.

OR

(3) \_\_\_ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

8. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that in situations where life‑sustaining treatment is being withheld or withdrawn pursuant to Paragraph 7, (INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS):

(1) \_\_\_ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged by tube feeding if my agent believes the burdens of tube feeding outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved, and the quality as well as the possible extension of my life in making this decision.

OR

(2) \_\_\_ DIRECTIVE TO WITHHOLD OR WITHDRAW TUBE FEEDING. I do not want my life prolonged by tube feeding.

OR

(3) \_\_\_ DIRECTIVE FOR PROVISION OF TUBE FEEDING. I want tube feeding to be provided within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedure, and without regard to whether other forms of life‑sustaining treatment are being withheld or withdrawn.

IF YOU DO NOT INITIAL ANY OF THE STATEMENTS IN PARAGRAPH 8, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this \_\_\_ day of \_\_\_, 20 \_\_. My current home address is:

\_

Principal's Signature: \_

Print Name of Principal: \_

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.

Witness No. 1

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Telephone: \_

Address: \_

\_

Witness No. 2

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Telephone: \_

Address: \_

\_

(This portion of the document is optional and is not required to create a valid health care power of attorney.)

STATE OF SOUTH CAROLINA

COUNTY OF \_

The foregoing instrument was acknowledged before me by Principal on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_\_\_\_\_\_\_\_\_\_.

Notary Public for South Carolina \_

My Commission Expires: \_

(E) A health care agent has, in addition to the powers set forth in the health care power of attorney, the following specific powers:

(1) to have access to the principal's medical records and information to the same extent that the principal would have access, including the right to disclose the contents to others;

(2) to contract on the principal's behalf for placement in a health care or nursing care facility or for health care related services, without the agent incurring personal financial liability for the contract;

(3) to hire and fire medical, social service, and other support personnel responsible for the principal's care;

(4) to have the same health care facility or nursing care facility visitation rights and privileges of the principal as are permitted to immediate family members or spouses.

(F)(1) The agent is not entitled to compensation for services performed under the health care power of attorney, but the agent is entitled to reimbursement for all reasonable expenses incurred as a result of carrying out the health care power of attorney or the authority granted by this section.

(2) The agent's consent to health care or to the provision of services to the principal does not cause the agent to be liable for the costs of the care or services.

(G) If a principal has been diagnosed as pregnant, life‑sustaining procedures may not be withheld or withdrawn pursuant to the health care power of attorney during the course of the principal's pregnancy. This subsection does not otherwise affect the agent's authority to make decisions concerning the principal's obstetrical and other health care during the course of the pregnancy.

(H) A health care provider or nursing care provider having knowledge of the principal's health care power of attorney has a duty to follow directives of the agent that are consistent with the health care power of attorney to the same extent as if they were given by the principal. If it is uncertain whether a directive is consistent with the health care power of attorney, the health care provider, nursing care provider, agent, or other interested person may apply to the probate court for an order determining the authority of the agent to give the directive.

(I) An agent acting pursuant to a health care power of attorney shall make decisions concerning the principal's health care in accordance with the principal's directives in the health care power of attorney and with any other statements of intent by the principal that are known to the agent and are not inconsistent with the directives in the health care power of attorney. If a principal has a valid Declaration of a Desire for a Natural Death pursuant to Title 44, Chapter 77, the declaration must be given effect in any situation to which it is applicable. The agent named in the health care power of attorney has authority to make decisions only in situations to which the declaration does not apply. However, nothing herein prevents the principal or a person designated by the principal in the declaration from revoking the declaration as provided in Section 44‑77‑80.

(J)(1) A person who relies in good faith upon a person's representation that he is the person named as agent in a health care power of attorney is not subject to civil or criminal liability or disciplinary action for recognizing the agent's authority.

(2) A health care provider or nursing care provider who in good faith relies on a health care decision made by an agent or successor agent is not subject to civil or criminal liability or disciplinary action on account of relying on the decision.

(3) An agent who in good faith makes a health care decision pursuant to a health care power of attorney is not subject to civil or criminal liability on account of the substance of the decision.

(K)(1) The principal may appoint one or more successor agents in the health care power of attorney in the event an agent dies, becomes legally disabled, resigns, refuses to act, is unavailable, or, if the agent is the spouse of the principal, becomes divorced or separated from the principal. A successor agent will succeed to all duties and powers given to the agent in the health care power of attorney.

(2) If no agent or successor agent is available, willing, and qualified to make a decision concerning the principal's health care, the decision must be made according to the provisions of and by the person authorized by the Adult Health Care Consent Act.

(3) All directives, statements of personal values, or statements of intent made by the principal in the health care power of attorney must be treated as exercises of the principal's right to direct the course of his health care. Decisions concerning the principal's health care made by a guardian, by the probate court, or by a surrogate pursuant to the Adult Health Care Consent Act, must be made in accordance with the directions stated in the health care power of attorney.

(L)(1) A health care power of attorney may be revoked in the following ways:

(a) by a writing, an oral statement, or any other act constituting notification by the principal to the agent or to a health care provider responsible for the principal's care of the principal's specific intent to revoke the health care power of attorney; or

(b) by the principal's execution of a subsequent health care power of attorney or the principal's execution of a subsequent durable power of attorney under Section 62‑5‑501 if the durable power of attorney states an intention that the health care power of attorney be revoked or if the durable power of attorney is inconsistent with the health care power of attorney.

(2) A health care provider who is informed of or provided with a revocation of a health care power of attorney immediately must record the revocation in the principal's medical record and notify the agent, the attending physician, and all other health care providers or nursing care providers who are responsible for the principal's care.

(M) The execution and effectuation of a health care power of attorney does not constitute suicide for any purpose.

(N) No person may be required to sign a health care power of attorney in accordance with this section as a condition for coverage under an insurance contract or for receiving medical treatment or as a condition of admission to a health care or nursing care facility.

(O) Nothing in this section may be construed to authorize or approve mercy killing or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

(P) The absence of a health care power of attorney by an adult patient does not give rise to a presumption of his intent to consent to or refuse death prolonging procedures. Nothing in this section impairs other legal rights or legal responsibilities which a person may have to effect the provision or the withholding or withdrawal of life‑sustaining procedures in a lawful manner.

(Q)(1) If a person coerces or fraudulently induces another person to execute a health care power of attorney, falsifies or forges a health care power of attorney, or wilfully conceals, cancels, obliterates, or destroys a revocation of a health care power of attorney, and the principal dies as a result of the withdrawal or withholding of treatment pursuant to the health care power of attorney, that person is subject to prosecution in accordance with the criminal laws of this State.

(2) Nothing in this section prohibits a person from informing another person of the existence of this section, delivering to another person a copy of this section or a form for a health care power of attorney, or counseling another person in good faith concerning the execution of a health care power of attorney.

(3) If a person wilfully conceals, cancels, defaces, obliterates, or damages a health care power of attorney without the principal's consent, or falsifies or forges a revocation of a health care power of attorney, or otherwise prevents the implementation of the principal's wishes as stated in a health care power of attorney, that person breaches a duty owed to the principal and is responsible for payment of any expenses or other damages incurred as a result of the wrongful act.

(R) A physician or health care facility electing for any reason not to follow an agent's instruction that life‑sustaining procedures be withheld or withdrawn as authorized in the health care power of attorney shall make a reasonable effort to locate a physician or health care facility that will follow the instruction and has a duty to transfer the patient to that physician or facility. If a nurse or other employee of a health care provider or nursing care provider gives notice that the employee does not wish to participate in the withholding or withdrawal of life‑sustaining procedures as directed by an agent, a reasonable effort shall be made by the physician and the health care provider or nursing care provider to effect the withholding or withdrawal of life‑sustaining procedures without the participation of the employee.

(S)(1) Notwithstanding the requirements of subsections (C) and (D) of this section, any document or writing containing the following provisions is deemed to comply with the requirements of this section:

(a) the name and address of the person who meets the requirements of subsection (C)(1)(d) and is authorized to make health care related decisions if the principal becomes mentally incompetent;

(b) the types of health care related decisions that the health care agent is authorized to make;

(c) the signature of the principal;

(d) the signature of at least two persons who witnessed the principal's signature and who meet the requirements of subsection (C)(1)(c); and

(e) the attestation of a notary public.

(2) Additionally, any document that meets the requirements of subsection (S)(1) and also provides expressions of the principal's intentions or wishes with respect to the following health care issues authorizes the health care agent to act in accordance with these provisions:

(a) organ donations;

(b) life‑sustaining treatment;

(c) tube feeding;

(d) other kinds of medical treatment that the principal wishes to have or not to have;

(e) comfort and treatment issues;

(f) provisions for interment or disposal of the body after death; and

(g) any written statements that the principal may wish to have communicated on his behalf.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010.

**SECTION 62‑5‑505.** Validity of durable power of attorney that authorizes attorney to make health care decisions regarding principal properly executed pursuant to Section 62‑5‑501.

Section effective until January 1, 2017. See, also, section 62‑5‑505 effective January 1, 2017.

The validity of a durable power of attorney that authorizes an attorney to make health care decisions regarding the principal properly executed pursuant to Section 62‑5‑501 of the 1976 Code before or after the effective date of this act is not affected by the amendments to Part 5, Article 5, Title 62 of the 1976 Code contained in this act.

HISTORY: 1992 Act No. 306, Section 8.

Editor's Note

The reference to "this act," appearing in this section, refers to 1992 Act No. 306. For a complete list of sections affected by this act, see the 1992 distribution table in the Statutory Tables volume, Table B, Allocation of Acts.

Part 5

Health Care Powers of Attorney [Effective January 1, 2017]

**SECTION 62‑5‑500.** Short title.

Section effective January 1, 2017.

This part may be cited as the "South Carolina Statutory Health Care Power of Attorney Act".

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

**SECTION 62‑5‑501.** Definitions.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

As used in this part:

(1) "Agent" or "health care agent" means an individual designated in a health care power of attorney to make health care decisions on behalf of a principal.

(2) "Declaration of a desire for a natural death" or "declaration" means a document executed in accordance with the South Carolina Death with Dignity Act or a similar document executed in accordance with the law of another state.

(3) "Health care" means a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of injured, disabled, or sick persons; and placement in or removal from a facility that provides these forms of care.

(4) "Health care power of attorney" means a durable power of attorney executed in accordance with this part.

(5) "Health care provider" means a person, health care facility, organization, or corporation licensed, certified, or otherwise authorized or permitted by the laws of this State to administer health care.

(6) "Life‑sustaining procedure" means a medical procedure or intervention that serves only to prolong the dying process. Life‑sustaining procedures do not include the administration of medication or other treatment for comfort care or alleviation of pain. The principal shall indicate in the health care power of attorney whether the provision of nutrition and hydration through medically or surgically implanted tubes is desired.

(7) "Permanent unconsciousness" means a medical diagnosis, consistent with accepted standards of medical practice, that a person is in a persistent vegetative state or some other irreversible condition in which the person has no neocortical functioning, but only involuntary vegetative or primitive reflex functions controlled by the brain stem.

(8) "Nursing care provider" means a nursing care facility or an employee of the facility.

(9) "Principal" means an individual who executes a health care power of attorney. A principal must be eighteen years of age or older and of sound mind.

(10) "Separated" means that the principal and his or her spouse are separated pursuant to one of the following:

(a) entry of a pendente lite order in a divorce or separate maintenance action;

(b) formal signing of a written property or marital settlement agreement;

(c) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

Editor's Note

Prior Laws: Former Section 62‑5‑501 was titled When power of attorney not affected by disability, and had the following history: 1986 Act No. 539, Section 1; 1990 Act No. 483, Section 5; 1990 Act No. 521, Section 104; 1992 Act No. 256, Section 1; 1992 Act No. 306, Sections 5, 6; 1997 Act No. 152, Section 27; 2002 Act No. 362, Section 9; 2010 Act No. 244, Section 40, eff June 7, 2010. See now 1976 Code Section 62‑8‑101 et seq.

**SECTION 62‑5‑502.** Health care power of attorney is a durable power of attorney; applicability of part.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

(a) A health care power of attorney is a durable power of attorney. Statutory provisions that refer to a durable power of attorney or judicial interpretations of the law relating to durable powers of attorney apply to a health care power of attorney to the extent that they are not inconsistent with this part.

(b) This section does not affect the right of a person to execute a durable power of attorney relating to health care pursuant to other provisions of law but which does not conform to the requirements of this section. If a durable power of attorney for health care executed under this part or under the laws of another state does not conform to the requirements of this section, the provisions of this section do not apply to it. However, a court is not precluded from determining that the law applicable to nonconforming durable powers of attorney for health care is the same as the law set forth in this section for health care powers of attorney.

(c) To the extent not inconsistent with this part, the provisions of the Adult Health Care Consent Act apply to the making of decisions by a health care agent and the implementation of those decisions by health care providers.

(d) In determining the effectiveness of a health care power of attorney, mental incompetence is to be determined according to the standards and procedures for inability to consent pursuant to Section 44‑66‑20(8), except that certification of mental incompetence by the agent may be substituted for certification by a second physician. If the certifying physician states that the principal's mental incompetence precludes the principal from making all health care decisions or all decisions concerning certain categories of health care, and that the principal's mental incompetence is permanent or of extended duration, no further certification is necessary in regard to the stated categories of health care decisions during the stated duration of mental incompetence unless the agent or the attending physician believes the principal may have regained capacity.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

Editor's Note

Prior Laws: Former Section 62‑5‑502 was titled Other powers of attorney not revoked until notice of death or disability, and had the following history: 1986 Act No. 539, Section 1. See now 1976 Code Section 62‑8‑101 et seq.

**SECTION 62‑5‑503.** Requirements for health care power of attorney.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

(a) A health care power of attorney must:

(1) be substantially in the form set forth in Section 62‑5‑504;

(2) be dated and signed by the principal or in the principal's name by another person in the principal's presence and by his direction;

(3) be signed by at least two persons, each of whom witnessed either the signing of the health care power of attorney or the principal's acknowledgment of his signature on the health care power of attorney. Each witness must state in a declaration as set forth in Section 62‑5‑504 that, at the time of the execution of the health care power of attorney, to the extent the witness has knowledge, the witness is not related to the principal by blood, marriage, or adoption, either as a spouse, lineal ancestor, descendant of the parents of the principal, or spouse of any of them; not directly financially responsible for the principal's medical care; not entitled to a portion of the principal's estate upon his decease under a will of the principal then existing or as an heir by intestate succession; not a beneficiary of a life insurance policy of the principal; and not appointed as health care agent or successor health care agent in the health care power of attorney; and that no more than one witness is an employee of a health care facility in which the principal is a patient, no witness is the attending physician or an employee of the attending physician, or no witness has a claim against the principal's estate upon his decease;

(4) state the name and address of the agent. A health care agent must be an individual who is eighteen years of age or older and of sound mind. A health care agent may not be a health care provider, or an employee of a provider, with whom the principal has a provider‑patient relationship at the time the health care power of attorney is executed, or an employee of a nursing care facility in which the principal resides, or a spouse of the health care provider or employee, unless the health care provider, employee, or spouse is a relative of the principal.

(b) The validity of a health care power of attorney is not affected by the principal's failure to initial any of the choices provided in Section 4, 6, or 7 of the Health Care Power of Attorney form or to name successor agents. If the principal fails to indicate either of the statements in Section 7 concerning provision of artificial nutrition and hydration, the agent does not have authority to direct that nutrition and hydration necessary for comfort care or alleviation of pain be withheld or withdrawn.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

Editor's Note

Prior Laws: Former Section 62‑5‑503 was titled Jurisdiction, and had the following history: 1990 Act No. 521, Section 87. See now 1976 Code Section 62‑8‑101 et seq.

**SECTION 62‑5‑504.** Form of health care power of attorney.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

A health care power of attorney executed on or after January 1, 2007, must be substantially in the following form:

INFORMATION ABOUT THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

1. THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR AGENT THE POWER TO MAKE HEALTH CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISION FOR YOURSELF. THIS POWER INCLUDES THE POWER TO MAKE DECISIONS ABOUT LIFE‑SUSTAINING TREATMENT. UNLESS YOU STATE OTHERWISE, YOUR AGENT WILL HAVE THE SAME AUTHORITY TO MAKE DECISIONS ABOUT YOUR HEALTH CARE AS YOU WOULD HAVE.

2. THIS POWER IS SUBJECT TO ANY LIMITATIONS OR STATEMENTS OF YOUR DESIRES THAT YOU INCLUDE IN THIS DOCUMENT. YOU MAY STATE IN THIS DOCUMENT ANY TREATMENT YOU DO NOT DESIRE OR TREATMENT YOU WANT TO BE SURE YOU RECEIVE. YOUR AGENT WILL BE OBLIGATED TO FOLLOW YOUR INSTRUCTIONS WHEN MAKING DECISIONS ON YOUR BEHALF. YOU MAY ATTACH ADDITIONAL PAGES IF YOU NEED MORE SPACE TO COMPLETE THE STATEMENT.

3. AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.

4. YOU HAVE THE RIGHT TO REVOKE THIS DOCUMENT, AND TERMINATE YOUR AGENT'S AUTHORITY, BY INFORMING EITHER YOUR AGENT OR YOUR HEALTH CARE PROVIDER ORALLY OR IN WRITING.

5. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.

6. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS TWO PERSONS SIGN AS WITNESSES. EACH OF THESE PERSONS MUST EITHER WITNESS YOUR SIGNING OF THE POWER OF ATTORNEY OR WITNESS YOUR ACKNOWLEDGMENT THAT THE SIGNATURE ON THE POWER OF ATTORNEY IS YOURS.

THE FOLLOWING PERSONS MAY NOT ACT AS WITNESSES:

A. YOUR SPOUSE, YOUR CHILDREN, GRANDCHILDREN, AND OTHER LINEAL DESCENDANTS; YOUR PARENTS, GRANDPARENTS, AND OTHER LINEAL ANCESTORS; YOUR SIBLINGS AND THEIR LINEAL DESCENDANTS; OR A SPOUSE OF ANY OF THESE PERSONS.

B. A PERSON WHO IS DIRECTLY FINANCIALLY RESPONSIBLE FOR YOUR MEDICAL CARE.

C. A PERSON WHO IS NAMED IN YOUR WILL, OR, IF YOU HAVE NO WILL, WHO WOULD INHERIT YOUR PROPERTY BY INTESTATE SUCCESSION.

D. BENEFICIARY OF A LIFE INSURANCE POLICY ON YOUR LIFE.

E. THE PERSONS NAMED IN THE HEALTH CARE POWER OF ATTORNEY AS YOUR AGENT OR SUCCESSOR AGENT.

F. YOUR PHYSICIAN OR AN EMPLOYEE OF YOUR PHYSICIAN.

G. A PERSON WHO WOULD HAVE A CLAIM AGAINST ANY PORTION OF YOUR ESTATE (PERSONS TO WHOM YOU OWE MONEY).

IF YOU ARE A PATIENT IN A HEALTH FACILITY, NO MORE THAN ONE WITNESS MAY BE AN EMPLOYEE OF THAT FACILITY.

7. YOUR AGENT MUST BE A PERSON WHO IS 18 YEARS OF AGE OR OLDER AND OF SOUND MIND. IT MAY NOT BE YOUR DOCTOR OR ANY OTHER HEALTH CARE PROVIDER THAT IS NOW PROVIDING YOU WITH TREATMENT; OR AN EMPLOYEE OF YOUR DOCTOR OR PROVIDER; OR A SPOUSE OF THE DOCTOR, PROVIDER, OR EMPLOYEE; UNLESS THE PERSON IS A RELATIVE OF YOURS.

8. YOU SHOULD INFORM THE PERSON THAT YOU WANT HIM OR HER TO BE YOUR HEALTH CARE AGENT. YOU SHOULD DISCUSS THIS DOCUMENT WITH YOUR AGENT AND YOUR PHYSICIAN AND GIVE EACH A SIGNED COPY. IF YOU ARE IN A HEALTH CARE FACILITY OR A NURSING CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.

HEALTH CARE POWER OF ATTORNEY

(S.C. STATUTORY FORM)

1. DESIGNATION OF HEALTH CARE AGENT

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, hereby appoint:

(Principal)

(Agent's Name) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Agent's Address) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: home: \_\_\_\_\_\_\_\_\_\_ work: \_\_\_\_\_\_\_\_\_\_ mobile: \_\_\_\_\_\_ as my agent to make health care decisions for me as authorized in this document.

Successor Agent: If an agent named by me dies, becomes legally disabled, resigns, refuses to act, becomes unavailable, or if an agent who is my spouse is divorced or separated from me, I name the following as successors to my agent, each to act alone and successively, in the order named:

A. First Alternate Agent:

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

Telephone: home: \_\_\_\_\_\_\_\_ work: \_\_\_\_\_\_\_\_ mobile: \_\_\_\_\_\_\_\_

B. Second Alternate Agent:

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

Telephone: home: \_\_\_\_\_\_\_\_ work: \_\_\_\_\_\_\_\_ mobile: \_\_\_\_\_\_\_\_

Unavailability of Agent(s): If at any relevant time the agent or successor agents named here are unable or unwilling to make decisions concerning my health care, and those decisions are to be made by a guardian, by the Probate Court, or by a surrogate pursuant to the Adult Health Care Consent Act, it is my intention that the guardian, Probate Court, or surrogate make those decisions in accordance with my directions as stated in this document.

2. EFFECTIVE DATE AND DURABILITY

By this document I intend to create a durable power of attorney effective upon, and only during, any period of mental incompetence, except as provided in Paragraph 3 below.

3. HIPAA AUTHORIZATION

When considering or making health care decisions for me, all individually identifiable health information and medical records may be released without restriction to my health care agent(s) and/or my alternate health care agent(s) named above including, but not limited to, (i) diagnostic, treatment, other health care, and related insurance and financial records and information associated with any past, present, or future physical or mental health condition including, but not limited to, diagnosis or treatment of HIV/AIDS, sexually transmitted disease(s), mental illness, and/or drug or alcohol abuse and (ii) any written opinion relating to my health that such health care agent(s) and/or alternate health care agent(s) may have requested. Without limiting the generality of the foregoing, this release authority applies to all health information and medical records governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d and 45 C.F.R. 160‑164; is effective whether or not I am mentally competent; has no expiration date; and shall terminate only in the event that I revoke the authority in writing and deliver it to my health care provider.

4. AGENT'S POWERS

I grant to my agent full authority to make decisions for me regarding my health care. In exercising this authority, my agent shall follow my desires as stated in this document or otherwise expressed by me or known to my agent. In making any decision, my agent shall attempt to discuss the proposed decision with me to determine my desires if I am able to communicate in any way. If my agent cannot determine the choice I would want made, then my agent shall make a choice for me based upon what my agent believes to be in my best interests. My agent's authority to interpret my desires is intended to be as broad as possible, except for any limitations I may state below.

Accordingly, unless specifically limited by the provisions specified below, my agent is authorized as follows:

A. To consent, refuse, or withdraw consent to any and all types of medical care, treatment, surgical procedures, diagnostic procedures, medication, and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, nutritional support and hydration, and cardiopulmonary resuscitation.

B. To authorize, or refuse to authorize, any medication or procedure intended to relieve pain, even though that use may lead to physical damage, addiction, or hasten the moment of, but not intentionally cause, my death.

C. To authorize my admission to or discharge, even against medical advice, from a hospital, nursing care facility, or similar facility or service.

D. To take another action necessary to making, documenting, and assuring implementation of decisions concerning my health care, including, but not limited to, granting a waiver or release from liability required by a hospital, physician, nursing care provider, or other health care provider; signing any documents relating to refusals of treatment or the leaving of a facility against medical advice, and pursuing any legal action in my name, and at the expense of my estate to force compliance with my wishes as determined by my agent, or to seek actual or punitive damages for the failure to comply.

E. The powers granted above do not include the following powers or are subject to the following rules or limitations: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

5. ORGAN DONATION (INITIAL ONLY ONE)

My agent may \_\_\_; may not \_\_\_ consent to the donation of all or any of my tissue or organs for purposes of transplantation.

6. EFFECT ON DECLARATION OF A DESIRE FOR A NATURAL DEATH (LIVING WILL)

I understand that if I have a valid Declaration of a Desire for a Natural Death, the instructions contained in the Declaration will be given effect in any situation to which they are applicable. My agent will have authority to make decisions concerning my health care only in situations to which the Declaration does not apply.

7. STATEMENT OF DESIRES CONCERNING LIFE‑SUSTAINING TREATMENT

With respect to any Life‑Sustaining Treatment, I direct the following:

(INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS)

A. \_\_\_ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged nor do I want life‑sustaining 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, my personal beliefs, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life‑sustaining treatment.

OR

B. \_\_\_ DIRECTIVE TO WITHHOLD OR WITHDRAW TREATMENT. I do not want my life to be prolonged and I do not want life‑sustaining treatment:

1. if I have a condition that is incurable or irreversible and, without the administration of life‑sustaining procedures, expected to result in death within a relatively short period of time; or

2. if I am in a state of permanent unconsciousness.

OR

C. \_\_\_ DIRECTIVE FOR MAXIMUM TREATMENT. I want my life to be prolonged to the greatest extent possible, within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedures.

8. STATEMENT OF DESIRES REGARDING TUBE FEEDING

With respect to Nutrition and Hydration provided by means of a nasogastric tube or tube into the stomach, intestines, or veins, I wish to make clear that in situations where life‑sustaining treatment is being withheld or withdrawn pursuant to Paragraph 7:

(INITIAL ONLY ONE OF THE FOLLOWING 3 PARAGRAPHS):

A. \_\_\_ GRANT OF DISCRETION TO AGENT. I do not want my life to be prolonged by tube feeding if my agent believes the burdens of tube feeding outweigh the expected benefits. I want my agent to consider the relief of suffering, my personal beliefs, the expense involved, and the quality as well as the possible extension of my life in making this decision.

OR

B. \_\_\_ DIRECTIVE TO WITHHOLD OR WITHDRAW TUBE FEEDING. I do not want my life prolonged by tube feeding.

OR

C. \_\_\_ DIRECTIVE FOR PROVISION OF TUBE FEEDING. I want tube feeding to be provided within the standards of accepted medical practice, without regard to my condition, the chances I have for recovery, or the cost of the procedure, and without regard to whether other forms of life‑sustaining treatment are being withheld or withdrawn.

IF YOU DO NOT INITIAL ANY OF THE STATEMENTS IN PARAGRAPH 8, YOUR AGENT WILL NOT HAVE AUTHORITY TO DIRECT THAT NUTRITION AND HYDRATION NECESSARY FOR COMFORT CARE OR ALLEVIATION OF PAIN BE WITHDRAWN.

9. ADMINISTRATIVE PROVISIONS

A. I revoke any prior Health Care Power of Attorney and any provisions relating to health care of any other prior power of attorney.

B. This power of attorney is intended to be valid in any jurisdiction in which it is presented.

BY SIGNING HERE I INDICATE THAT I UNDERSTAND THE CONTENTS OF THIS DOCUMENT AND THE EFFECT OF THIS GRANT OF POWERS TO MY AGENT.

I sign my name to this Health Care Power of Attorney on this

\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20 \_\_. My current home address is:

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

Principal's Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name of Principal: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I declare, on the basis of information and belief, that the person who signed or acknowledged this document (the principal) is personally known to me, that he/she signed or acknowledged this Health Care Power of Attorney in my presence, and that he/she appears to be of sound mind and under no duress, fraud, or undue influence. I am not related to the principal by blood, marriage, or adoption, either as a spouse, a lineal ancestor, descendant of the parents of the principal, or spouse of any of them. I am not directly financially responsible for the principal's medical care. I am not entitled to any portion of the principal's estate upon his decease, whether under any will or as an heir by intestate succession, nor am I the beneficiary of an insurance policy on the principal's life, nor do I have a claim against the principal's estate as of this time. I am not the principal's attending physician, nor an employee of the attending physician. No more than one witness is an employee of a health care facility in which the principal is a patient. I am not appointed as Health Care Agent or Successor Health Care Agent by this document.

Witness No. 1

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Witness No. 2

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_

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

(This portion of the document is optional and is not required to create a valid health care power of attorney.)

STATE OF SOUTH CAROLINA

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The foregoing instrument was acknowledged before me by Principal on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_\_\_\_\_\_\_

Notary Public for South Carolina

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; 2016 Act No. 279 (S.778), Section 2, eff January 1, 2017.

Editor's Note

Prior Laws: Former Section 62‑5‑504 was titled Health care power of attorney; definitions; form, and had the following history: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010. See now 1976 Code Section 62‑5‑500 et seq.

**SECTION 62‑5‑505.** Health care agent powers.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

A health care agent has, in addition to the powers set forth in the health care power of attorney, the following specific powers to:

(1) have access to the principal's medical records and information to the same extent that the principal would have access, including the right to disclose the contents to others;

(2) contract on the principal's behalf for placement in a health care or nursing care facility or for health care related services, without the agent incurring personal financial liability for the contract;

(3) hire and fire medical, social service, and other support personnel responsible for the principal's care;

(4) have the same health care facility or nursing care facility visitation rights and privileges of the principal as are permitted to immediate family members or spouses.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

Editor's Note

Prior Laws: Former Section 62‑5‑505 was titled Validity of durable power of attorney that authorizes attorney to make health care decisions regarding principal properly executed pursuant to Section 62‑5‑501, and had the following history: 1992 Act No. 306, Section 8; omitted by 2016 Act No. 279, Section 2, eff January 1, 2017.

**SECTION 62‑5‑506.** Compensation of agent; liability for costs of care or services.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

(a) The agent is not entitled to compensation for services performed under the health care power of attorney, but the agent is entitled to reimbursement for all reasonable expenses incurred as a result of carrying out the health care power of attorney or the authority granted by this section.

(b) The agent's consent to health care or to the provision of services to the principal does not cause the agent to be liable for the costs of the care or services.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

**SECTION 62‑5‑507.** Pregnancy of principal.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

If a principal has been diagnosed as pregnant, life‑sustaining procedures may not be withheld or withdrawn pursuant to the health care power of attorney during the course of the principal's pregnancy. This subsection does not otherwise affect the agent's authority to make decisions concerning the principal's obstetrical and other health care during the course of the pregnancy.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

**SECTION 62‑5‑508.** Duty of health care or nursing care provider.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

A health care provider or nursing care provider having knowledge of the principal's health care power of attorney has a duty to follow directives of the agent that are consistent with the health care power of attorney to the same extent as if they were given by the principal. If it is uncertain whether a directive is consistent with the health care power of attorney, the health care provider, nursing care provider, agent, or other interested person may apply to the probate court for an order determining the authority of the agent to give the directive.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

**SECTION 62‑5‑509.** Duty of agent.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

An agent acting pursuant to a health care power of attorney shall make decisions concerning the principal's health care in accordance with the principal's directives in the health care power of attorney and with any other statements of intent by the principal that are known to the agent and are not inconsistent with the directives in the health care power of attorney. If a principal has a valid Declaration of a Desire for a Natural Death pursuant to Chapter 77, Title 44, then the declaration must be given effect in any situation to which it is applicable. The agent named in the health care power of attorney has authority to make decisions only in situations to which the declaration does not apply. However, nothing in this section prevents the principal or a person designated by the principal in the declaration from revoking the declaration pursuant to Section 44‑77‑80.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

**SECTION 62‑5‑510.** Immunity from liability.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

(a) A person who relies in good faith upon a person's representation that he is the person named as agent in a health care power of attorney is not subject to civil or criminal liability or disciplinary action for recognizing the agent's authority.

(b) A health care provider or nursing care provider who in good faith relies on a health care decision made by an agent or successor agent is not subject to civil or criminal liability or disciplinary action on account of relying on the decision.

(c) An agent who in good faith makes a health care decision pursuant to a health care power of attorney is not subject to civil or criminal liability on account of the substance of the decision.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

**SECTION 62‑5‑511.** Appointment of successor agents.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

(a) The principal may appoint one or more successor agents in the health care power of attorney in the event an agent dies, becomes legally disabled, resigns, refuses to act, is unavailable, or, if the agent is the spouse of the principal, becomes divorced or separated from the principal. A successor agent will succeed to all duties and powers given to the agent in the health care power of attorney.

(b) If no agent or successor agent is available, willing, and qualified to make a decision concerning the principal's health care, the decision must be made according to the provisions of and by the person authorized by the Adult Health Care Consent Act.

(c) All directives, statements of personal values, or statements of intent made by the principal in the health care power of attorney must be treated as exercises of the principal's right to direct the course of his health care. Decisions concerning the principal's health care made by a guardian, by the probate court, or by a surrogate pursuant to the Adult Health Care Consent Act, must be made in accordance with the directions stated in the health care power of attorney.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

**SECTION 62‑5‑512.** Revocation of health care power of attorney.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

(a) A health care power of attorney may be revoked in the following ways:

(1) by a writing, an oral statement, or any other act constituting notification by the principal to the agent or to a health care provider responsible for the principal's care of the principal's specific intent to revoke the health care power of attorney; or

(2) by the principal's execution of a subsequent health care power of attorney or the principal's execution of a subsequent durable power of attorney pursuant to Article 8, Title 62, if the durable power of attorney states an intention that the health care power of attorney be revoked or if the durable power of attorney is inconsistent with the health care power of attorney.

(b) A health care provider who is informed of or provided with a revocation of a health care power of attorney immediately must record the revocation in the principal's medical record and notify the agent, the attending physician, and all other health care providers or nursing care providers who are responsible for the principal's care.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

Code Commissioner's Note

At the direction of the Code Commissioner, in 2016, in (a)(2), the reference to "Section 62‑5‑501" was changed to "Article 8, Title 62".

**SECTION 62‑5‑513.** Execution of health care power of attorney does not constitute suicide; requirement of signing health care power of attorney prohibited as condition for insurance or receipt of health care; mercy killing not authorized or approved; absence of health care power of attorney not presumption of intent to consent to or refuse death prolonging procedures.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

(a) The execution and effectuation of a health care power of attorney does not constitute suicide for any purpose.

(b) A person may not be required to sign a health care power of attorney in accordance with this section as a condition for coverage under an insurance contract or for receiving medical treatment or as a condition of admission to a health care or nursing care facility.

(c) Nothing in this section may be construed to authorize or approve mercy killing or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

(d) The absence of a health care power of attorney by an adult patient does not give rise to a presumption of his intent to consent to or refuse death prolonging procedures. Nothing in this section impairs other legal rights or legal responsibilities which a person may have to effect the provision or the withholding or withdrawal of life‑sustaining procedures in a lawful manner.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

**SECTION 62‑5‑514.** Criminal liability.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

If a person coerces or fraudulently induces another person to execute a health care power of attorney, falsifies or forges a health care power of attorney, or wilfully conceals, cancels, obliterates, or destroys a revocation of a health care power of attorney, and the principal dies as a result of the withdrawal or withholding of treatment pursuant to the health care power of attorney, that person is subject to prosecution in accordance with the criminal laws of this State.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

**SECTION 62‑5‑515.** Informing another person regarding this part not prohibited.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

Nothing in this part prohibits a person from informing another person of the existence of this part, delivering to another person a copy of this part or a form for a health care power of attorney, or counseling another person in good faith concerning the execution of a health care power of attorney.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

**SECTION 62‑5‑516.** Civil liability.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

(a) If a person wilfully conceals, cancels, defaces, obliterates, or damages a health care power of attorney without the principal's consent, or falsifies or forges a revocation of a health care power of attorney, or otherwise prevents the implementation of the principal's wishes as stated in a health care power of attorney, that person breaches a duty owed to the principal and is responsible for payment of any expenses or other damages incurred as a result of the wrongful act.

(b) A physician or health care facility electing for any reason not to follow an agent's instruction that life‑sustaining procedures be withheld or withdrawn as authorized in the health care power of attorney shall make a reasonable effort to locate a physician or health care facility that will follow the instruction and has a duty to transfer the patient to that physician or facility. If a nurse or other employee of a health care provider or nursing care provider gives notice that the employee does not wish to participate in the withholding or withdrawal of life‑sustaining procedures as directed by an agent, a reasonable effort shall be made by the physician and the health care provider or nursing care provider to effect the withholding or withdrawal of life‑sustaining procedures without the participation of the employee.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

**SECTION 62‑5‑517.** Document or writing deemed to comply with requirements of this part.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

(a) A document or writing containing the following provisions is deemed to comply with the requirements of this part:

(1) the name and address of the person who meets the requirements of Section 62‑5‑503 and is authorized to make health care related decisions if the principal becomes mentally incompetent;

(2) the types of health care related decisions that the health care agent is authorized to make;

(3) the signature of the principal;

(4) the signature of at least two persons who witnessed the principal's signature and who meet the requirements of Section 62‑5‑503; and

(5) the attestation of a notary public.

(b) Additionally, a document that meets the above requirements and also provides expressions of the principal's intentions or wishes with respect to the following health care issues authorizes the health care agent to act in accordance with these provisions:

(1) organ donations;

(2) life‑sustaining treatment;

(3) tube feeding;

(4) other kinds of medical treatment that the principal wishes to have or not to have;

(5) comfort and treatment issues;

(6) provisions for interment or disposal of the body after death; and

(7) any written statements that the principal may wish to have communicated on his behalf.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

**SECTION 62‑5‑518.** Validity of a durable power of attorney.

Section effective January 1, 2017. See, also, section 62‑5‑504 effective until January 1, 2017.

The validity of a durable power of attorney that authorizes an attorney to make health care decisions regarding the principal which is properly executed pursuant to this part before or after the effective date of this act is not affected by the amendments contained in this act.

HISTORY: 1992 Act No. 306, Section 1; 2005 Act No. 172, Section 1; 2006 Act No. 365, Section 1; 2008 Act No. 303, Sections 2, 3, eff June 11, 2008; 2010 Act No. 244, Section 41, eff June 7, 2010; formerly 1976 Code Section 62‑5‑504; 2016 Act No. 279, Section 2, eff January 1, 2017.

Part 6

Uniform Veterans' Guardianship Act [Repealed]

**SECTIONS 62‑5‑601 to 62‑5‑624.** Repealed.

HISTORY: Former 62‑5‑601, titled Short title, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑602, titled Definitions, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑603, titled Appointment of guardians, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑604, titled Persons who may file summons and petition for appointment, had the following history: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 42, eff June 7, 2010. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑605, titled Contents of petition for appointment of guardian, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑606, titled Facts that constitute prima facie evidence of need for guardian of a minor ward, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑607, titled Facts that constitute prima facie evidence of need for guardian of a mentally incompetent ward, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑608, titled Notice of summons and petition, had the following history: 1986 Act No. 539, Section 1; 2010 Act No. 244, Section 43, eff June 7, 2010. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑609, titled Fitness of guardian; bond, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑610, titled Limitation on number of wards of one guardian, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑611, titled Annual account of guardians receiving funds from Veterans' Administration, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑612, titled Exhibit of securities at time of filing account, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑613, titled Effect of failure to account, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑614, titled Accountability for funds not received from Administration, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑615, titled Investments that guardians may make, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑616, titled Use of estate for support of persons other than ward, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑617, titled Copies of public records shall be furnished without charge, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑618, titled Compensation of guardians, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑619, titled Final discharge of guardian; paying out funds less than one thousand dollars, had the following history: 1986 Act No. 539, Section 1; 1987 Act No. 171, Section 68. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑620, titled Proceedings in which administrator shall be a party in interest, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑621, titled Copies of accounts, certificates, or pleadings shall be sent to Veterans' Administration, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑622, titled Time, place, and notice of hearing on account, petition, or other pleading, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑623, titled Notice of hearings shall be given to guardian; orders, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

HISTORY: Former 62‑5‑624, titled Construction, had the following history: 1986 Act No. 539, Section 1. Repealed by 2016 Act No. 278, Section 6, eff June 9, 2016.

Part 7

South Carolina Adult Guardianship and Protective Proceedings Jurisdiction Act

**SECTION 62‑5‑700.** Short title.

This act may be cited as the "South Carolina Adult Guardianship and Protective Proceedings Jurisdiction Act".

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑701.** Exclusive jurisdiction.

Notwithstanding another provision of law, this part provides the exclusive jurisdictional basis for a court of this State to appoint a guardian or issue a protective order for an adult.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑702.** Definitions.

As used in this part, the term:

(1) "Adult" means an individual who has attained eighteen years of age or who has been emancipated by a court of competent jurisdiction.

(2) "Conservator" means a person appointed by a court to manage an estate of a protected person.

(3) "Court" means a probate court in this State or a court in another state with the same jurisdiction as a probate court in this State.

(4) "Emergency" means circumstances that will likely result in substantial harm to a respondent's health, safety, or welfare or substantial economic loss or expense.

(5) "Guardian" means a person who has qualified as a guardian of an incapacitated person pursuant to a court appointment, but excludes one who is a guardian ad litem or a statutory guardian.

(6) "Guardianship order" means an order appointing a guardian.

(7) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(8) "Home state" means the state in which the respondent was physically present, including a period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including a period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(9) "Incapacitated person" means an adult for whom a guardian or conservator has been appointed.

(10) "Party" means the respondent, petitioner, guardian, conservator, or other person allowed by the court to participate in a guardianship or protective proceeding.

(11) "Person", except in the term "incapacitated person" or "protected person", means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or another legal or commercial entity.

(12) "Protected person" means an adult for whom a protective order has been issued.

(13) "Protective order" means an order appointing a conservator or a court order relating to the management of property of an incapacitated person.

(14) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(16) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(17) "Significant‑connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available. In determining pursuant to Sections 62‑5‑707 and 62‑5‑714(E) whether a respondent has a significant connection with a particular state, the court shall consider the:

(a) location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(b) length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) location of the respondent's property; and

(d) extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

(18) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or a territory or insular possession subject to the jurisdiction of the United States.

(19) "Ward" means a person for whom a guardian has been appointed.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑703.** Treatment of foreign countries.

The court may treat a foreign country as if it were a state for the purpose of applying this part.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑704.** Court communication with court in another state; record required; exceptions; participation of parties.

(A) The court may communicate with a court in another state concerning a proceeding arising pursuant to this article. The court shall allow the parties to participate in a discussion between courts on the merits of a proceeding. Except as otherwise provided in subsection (B), the court shall make a record of the communication. When a discussion on the merits of a proceeding between courts is held, the record must show that the parties were given an opportunity to participate, must summarize the issues discussed, and must list the participants to the discussion. In all other matters except as provided in subsection (B), the record may be limited to the fact that the communication occurred.

(B) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record. A court may allow the parties to a proceeding to participate in any communications held pursuant to this subsection.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑705.** Requests to court of another state; requests from court of another state.

(A) In a guardianship or protective proceeding in this State, the court may request the appropriate court of another state to do any of the following:

(1) hold an evidentiary hearing;

(2) order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(3) order that an evaluation or assessment be made of the respondent;

(4) order an appropriate investigation of a person involved in a proceeding;

(5) forward to the court a certified copy of the transcript or other record of a hearing pursuant to item (1) or another proceeding, evidence otherwise produced pursuant to item (2), and an evaluation or assessment prepared in compliance with an order pursuant to item (3) or (4);

(6) issue an order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; and

(7) issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Section 164.504.

(B) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (A), the court has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑706.** Testimony of witness located in another state; permitted means of giving testimony; lack of original writing.

(A) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(B) In a guardianship or protective proceeding, a court in this State may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. The court shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(C) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑707.** Jurisdiction of court.

The court has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) this State is the respondent's home state;

(2) on the date the petition is filed, this State is a significant‑connection state; and

(a) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this State is a more appropriate forum; or

(b) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant‑connection state and, before the court makes the appointment or issues the order:

(i) a petition for an appointment or order is not filed in the respondent's home state;

(ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) the court concludes that it is an appropriate forum pursuant to the factors provided in Section 62‑5‑710(C);

(3) this State does not have jurisdiction pursuant to either item (1) or (2), the respondent's home state and all significant‑connection states have declined to exercise jurisdiction because this State is the more appropriate forum, and jurisdiction in this State is consistent with the constitutions of this State and the United States; or

(4) the requirements for special jurisdiction pursuant to Section 62‑5‑708 are met.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑708.** Special jurisdiction.

(A) The court lacking jurisdiction pursuant to Section 62‑5‑707(1) through (3) has special jurisdiction to do any of the following:

(1) appoint a guardian in an emergency pursuant to this article for a term not exceeding ninety days for a respondent who is physically present in this State;

(2) issue a protective order with respect to real or tangible personal property located in this State; or

(3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued pursuant to procedures similar to Section 62‑5‑714.

(B) If a petition for the appointment of a guardian in an emergency is brought in this State pursuant to this article and this State was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑709.** Exclusive and continuing jurisdiction; exception.

Except as otherwise provided in Section 62‑5‑708, a court that has appointed a guardian or issued a protective order consistent with this article has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑710.** Declining jurisdiction; more appropriate forum; dismissal or stay of proceeding.

(A) The court having jurisdiction pursuant to Section 62‑5‑707 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(B) If the court declines to exercise its jurisdiction pursuant to subsection (A), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(C) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(1) the expressed preference of the respondent;

(2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(3) the length of time the respondent was physically present in or was a legal resident of this or another state;

(4) the distance of the respondent from the court in each state;

(5) the financial circumstances of the respondent's estate;

(6) the nature and location of the evidence;

(7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) the familiarity of the court of each state with the facts and issues in the proceeding; and

(9) if an appointment is made, the court's ability to monitor the conduct of the guardian or conservator.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑711.** Jurisdiction acquired due to unjustifiable conduct; assessment of reasonable expenses against responsible party.

(A) If at any time the court determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1) decline to exercise jurisdiction;

(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) continue to exercise jurisdiction after considering:

(a) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(b) whether it is a more appropriate forum than the court of any other state pursuant to the factors provided in Section 62‑5‑710(C); and

(c) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 62‑5‑708.

(B) If the court determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this State or a governmental subdivision, agency, or instrumentality of this State unless authorized by law other than this article.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑712.** Notice requirements to respondent's home state.

If a petition for the appointment of a guardian or issuance of a protective order is brought in this State and this State was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this State, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this State.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑713.** Rules for dealing with conflicting petitions in this and another state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this State pursuant to Section 62‑5‑708(A)(1) or (2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this State and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) if the court has jurisdiction pursuant to Section 62‑5‑707, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to Section 62‑5‑707 before the appointment or issuance of the order.

(2) if the court does not have jurisdiction pursuant to Section 62‑5‑707, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this State shall dismiss the petition unless the court in the other state determines that the court in this State is a more appropriate forum.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑714.** Petition to transfer guardianship or conservatorship to another state; notice; hearing; provisional and final orders.

(A) A guardian or conservator appointed in this State may petition the court to transfer the guardianship or conservatorship to another state.

(B) Notice of a petition pursuant to subsection (A) must be given to the persons that would be entitled to notice of a petition in this State for the appointment of a guardian or conservator.

(C) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (A), except that no hearing shall be required if a consent order is signed by all parties who have pled, defended, or otherwise participated in the proceeding, as provided by the South Carolina Rules of Civil Procedure.

(D) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(E) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors provided in Section 62‑5‑707(2)(b);

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) adequate arrangements will be made for management of the protected person's property.

(F) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to Section 62‑5‑715; and

(2) the documents required to terminate a guardianship or conservatorship in this State.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑715.** Confirmation of transfer from another state; petition to accept guardianship or conservatorship; notice; hearing; provisional and final orders; determination of needed modification.

(A) To confirm transfer of a guardianship or conservatorship transferred to this State under provisions similar to Section 62‑5‑714, the guardian or conservator must petition the court in this State to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(B) Notice of a petition pursuant to subsection (A) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this State. The notice must be given in the same manner as notice is required to be given in this State.

(C) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (A).

(D) The court shall issue an order provisionally granting a petition filed pursuant to subsection (A) unless:

(1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) the guardian or conservator is ineligible for appointment in this State.

(E) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this State upon its receipt from the court from which the proceeding is being transferred of a final order issued pursuant to provisions similar to Section 62‑5‑714 transferring the proceeding to this State.

(F) Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the laws of this State.

(G) In granting a petition pursuant to this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(H) The denial by the court of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this State pursuant to another provision of this article if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."

**SECTION 62‑5‑716.** Registration of orders from another state; powers in this state.

(A) If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this State, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this State by filing as a foreign judgment in a court, in any appropriate county of this State, certified copies of the order and letters of office.

(B) If a conservator has been appointed in another state and a petition for a protective order is not pending in this State, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this State by filing as a foreign judgment in a court of this State, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

(C)(1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this State all powers authorized in the order of appointment except as prohibited under the laws of this State, including maintaining actions and proceedings in this State and, if the guardian or conservator is not a resident of this State, subject to any conditions imposed upon nonresident parties.

(2) A probate court of this State may grant any relief available pursuant to the provisions of this article and other laws of this State to enforce a registered order.

HISTORY: 2010 Act No. 213, Section 1, eff January 1, 2011.

Editor's Note

2010 Act No. 213, Section 4, provides as follows:

"The provisions of this act take effect on January 1, 2011, and apply to guardianship and protective proceedings begun on or after that date."