

## The Law and You Get Ready for New Advance Directives in 2008

Senate Bill 75 dramatically revises Utah's Code governing advance directives. Although passed during the 2007 Legislative Session, the new directives were delayed until January 2008.

A key reason for delaying the effective date was to allow sufficient time to communicate them to the public. This month's column is an attempt to help with that communication.

Utah's "Personal Choice and Living Will Act", found at Section 75-2-1101 thru 1119, Utah Code Annotated, will be repealed effective January 1, 2008. This section of Code includes the form for a "Living Will," which is commonly entitled a "Directive to Physicians and Providers of Medical Services."

This section of Code also includes the form for a "Special Power of Attorney" for medical decisions. This form gives power to your agent to make medical decisions for you when you are unable to give consent.

If you have a *Living Will* or a *Special Power of Attorney for Medical*, they will still be valid after January 1, 2008, but there will be new forms and procedures put in place that you may want to consider.

The new procedures, will be known as the "Advance Health Care Directive Act" ("Act") and found at Section 75-2a-1101 thru 124, Utah Code Annotated. In this month's column, I will begin a discussion of this new Act, and continue the discussion in one or

more subsequent columns.

At the beginning of the Act, there is a Legislative finding that states:

*(a) developments in health care technology make possible many alternatives for treating medical conditions and make possible the unnatural prolongation of life;*

*(b) individuals should have the clear legal choice to:*

*(i) accept or reject health care, even if rejecting health care will result in death sooner than death would be expected to occur if rejected health care were started or continued;*

*(ii) be spared unwanted procedures; and*

*(iii) be permitted to die with a maximum of dignity and function and a minimum of pain.*

These Legislative findings set the tone for the Act. In effect, the Legislature recognizes that individuals should have greater choices and greater control over how they are medically treated when it comes to the unnatural prolongation of life. The new Act provides for such choices and control.

The Act also states that Utah law should:

*(i) provide individuals with a legal tool to designate a health care agent and express preferences about health care options to go into effect only after the individual loses the ability to make or communicate health care decisions, including decisions about end-of-life care; and*

*(ii) promote a health care directive system that can be administered effectively within the health care system.*

The Act also provides its intent for your agent or “surrogate.”

*Surrogate decisions made on behalf of a person who previously had capacity to make health care decisions, but who has lost health care decision making capacity should be based on:*

*(i) input from the incapacitated person, to the extent possible under the circumstances;*

*(ii) specific preferences expressed by the individual prior to the loss of health care decision making capacity;*

*(iii) the surrogate's understanding of the individual's health care preferences; and*

*(iv) the surrogate's understanding of what the individual would have wanted under the circumstances; and*

*(v) surrogate decisions made on behalf of an individual who has never had health care decision making capacity should be made on the basis of the individual's best interest.*

The Act further states its intent as follows:

*In recognition of the dignity and privacy that all individuals are entitled to expect, and to protect the right of an individual to refuse to be treated without the individual's consent, the Legislature declares that this state recognizes the right to make binding health care directives directing health care providers to:*

*(a) provide life sustaining or life supporting medically indicated health care;*

*(b) withhold or withdraw health care; or*

*(c) provide health care only to the extent set forth in a health care directive.*

Consulting with an Elder Law Attorney may help you decide if you need to consider changes to your existing medical directives. To locate an Elder Law Attorney, check with the National Academy of Elder Law Attorneys at (520) 881-4005, or your local Yellow Pages.