

LAWS OF DELAWARE  
VOLUME 85  
CHAPTER 91  
153rd GENERAL ASSEMBLY  
FORMERLY  
SENATE BILL NO. 93

AN ACT TO AMEND TITLE 12, TITLE 16, TITLE 21, AND TITLE 31 OF THE DELAWARE CODE RELATING TO THIRD-PARTY DECISION MAKING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3982, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3982. Definitions [Effective Sept. 30, 2025].

For the purposes of this chapter:

(4) The term “last resort” includes any of the following:

a. Circumstances in which there is no other suitable person willing or able to serve as an agent under a durable power of attorney, an agent under a power of attorney for health care, a default surrogate decision maker, guardian, representative payee, or VA fiduciary.

b. Circumstances in which a person willing or able to serve, or already serving, as a validly appointed agent ~~of~~ under a durable power of attorney, an agent appointed under a power of attorney for health care, a default surrogate decision maker, representative payee, VA fiduciary, or a guardian, is available but sufficient cause has been found by the court that the individual available or so acting is not suitable to serve and that the appointment of the Public Guardian is in the best interest of the person who is incapacitated.

Section 2. Amend § 3983, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3983. Duties of the Public Guardian.

The Public Guardian:

(3) After evaluation of the conditions of the individual and in consideration of the established case acceptance priorities, may do any of the following:

a. Make a recommendation as to a suitable individual who is available and willing to serve as guardian or default surrogate decision maker or refer to an appropriate private, nonprofit, or other entity willing to serve as guardian, representative payee, or VA fiduciary.

Section 3. Amend § 1121, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1121. Resident’s rights.

(b) It is the public policy of this State that the interests of the resident must be protected by a declaration of a resident’s rights, and by requiring that all facilities treat their residents in accordance with such rights, which must include the following:

(39) Each resident has the right to compliance with the resident’s advance health-care directive, power of attorney, Delaware Medical Orders for Scope of Treatment, or similar document in accordance with and subject to Chapter 49 of Title 12 ~~and 12, Chapter 49A of Title 12, Chapter 25 of this title, title, and Chapter 25A of this title.~~

(40) ~~If a resident is adjudicated incompetent, is determined to be incompetent by the resident’s attending physician, or is unable to communicate, the resident’s rights shall devolve to the resident’s authorized representative, as established under any of the following:~~

a. ~~An advance health-care directive.~~

b. ~~A medical durable power of attorney for health-care decisions.~~

c. ~~A court-appointed guardian under Chapters 39 and 39A of Title 12, in accordance with the authority granted by the appointing court.~~

d. ~~A surrogate appointed under Chapter 25 of this title.~~

e. ~~An individual who is otherwise authorized under applicable law to make the health-care decisions being made by execution of the DMOST form on the patient’s behalf under Chapter 25A of this title. [Repealed].~~

Section 4. Amend § 1122, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1122. Devolution of rights.

Where consistent with the nature of each right in § 1121 of this title, ~~all rights, particularly as they pertain to a resident adjudicated incompetent in accordance with state law, or a resident who is found medically incapable by the resident's own attending physician, or a resident who is unable to communicate with others, shall devolve~~ State law, if the resident is determined to need a representative under federal law, or the presumption of the resident's capacity is rebutted under § 2504 of this title, all rights devolve to the resident's authorized representative, as established under any of the following:

(1) An advance health-care ~~directive~~, directive, as defined under § 2502 of this title.

(2) A ~~medical durable power of attorney for health-care decisions.~~ [Repealed].

(3) A court-appointed guardian pursuant to Chapters 39 and 39A of Title 12, in accordance with the authority granted by the appointing court.

(4) A default surrogate appointed under Chapter 25 of this title.

(5) An individual who is otherwise authorized under applicable law to make the health-care decisions being made by execution of the DMOST form on the patient's behalf under Chapter 25A of this title.

(6) A sponsoring agency or representative payee, except where the facility itself is the representative payee, selected under § 205(j) of the Social Security Act (42 U.S.C. § 405(j)).

Section 5. Amend § 1145, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1145. Criminal background checks.

(b) *Definitions.* —

(2) "Authorized representative" means an individual who has the highest priority to act for the patient under law, and who has the authority to make decisions with respect to the patient's health-care preferences. The patient's authorized representative can be 1 of the following:

a. An ~~individual agent~~ designated by a patient under an advance health-care ~~directive; an agent under a medical durable power of attorney for health-care decisions.~~ directive, as defined under § 2502 of this title.

b. A guardian of the person appointed under Chapter 39 or 39A of Title 12, in accordance with the authority granted by the ~~court; a~~

c. A default surrogate ~~appointed~~ under Chapter 25 of this title.

~~e.~~ d. An individual who is otherwise authorized under applicable law to make health-care decisions on the patient's behalf, if the patient lacks decision-making capacity.

Section 6. Amend § 2503A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2503A. Definitions.

For purposes of this chapter:

(1) "Advance health-care directive" means ~~an advance health-care directive under Chapter 25 of this title, a durable power of attorney for health-care decisions, or~~ as defined under § 2502 of this title or any individual instruction or power of attorney for health care valid in the state where such document was executed or where the individual executing such document was a resident at the time that such document was executed that appoints an agent. Said document must have been executed by the individual authorizing the appointed agent to make decisions about the individual's health care when such individual no longer has decision-making capacity.

(12) "Patient's authorized representative" or "authorized representative" means the individual signing a DMOST form on behalf of a patient without decision-making capacity, who has the highest priority to act for the patient under law, and who has the authority to make decisions with respect to the patient's health-care preferences being made on the DMOST form such individual is executing on behalf of the patient. The health-care practitioner shall determine the individual who is the patient's authorized representative by referencing the documentation giving such individual the required authority under law. The regulations implementing this chapter shall explain the priority set by law regarding who can act as an authorized representative. Based on the documentation provided by such individual as evidence of ~~his or her~~ that individual's authority, the patient's authorized representative could be an ~~individual agent~~ designated by a patient under an advance health-care directive, ~~an agent under a medical durable power of attorney for health-care decisions,~~ a guardian of the person appointed pursuant to Chapters 39 and 39A of Title 12, in accordance with the authority granted by the appointing court, a default

surrogate ~~appointed~~ under Chapter 25 of this title, or an individual who is otherwise authorized under applicable law to make the health-care decisions being made by execution of the DMOST form on the patient's behalf, if the patient lacks decision-making capacity.

Section 7. Amend § 5530, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5530. Definitions [Effective Sept. 30, 2025].

(a) "Alternative decision maker" is a person identified to make decisions for an individual in that individual's best interest. In the absence of an assigned legal guardian of person or applicable advance health-care ~~directive, power of attorney,~~ directive, as defined under § 2502 of this title, or similar legal instrument, a default surrogate may be determined under § 2512 of this title.

(c) ~~Individuals specified in this subsection are disqualified from acting as an alternate decision maker if the person receiving services from DDDS has filed a petition for a protection from abuse order against the individual or if the individual is the subject of a civil or criminal order prohibiting contact with the person receiving services from DDDS. [Repealed].~~

Section 8. Amend § 5531, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5531. Persons without legal guardians.

(a) Consent to perform elective surgery upon a person who is receiving services from the Division of Developmental Disabilities Services ("DDDS") may be given by the Division Director or such Director's designee if all of the following circumstances apply:

(1) The person receiving residential services cannot give ~~his or her own~~ informed ~~consent~~; consent.

(2) The person receiving services has no alternative decision ~~maker~~; and maker.

(3) The person receiving residential services has no legal guardian of the person, or applicable ~~advanced~~ advance health-care ~~directive, power of attorney,~~ directive, as defined under § 2502 of this title, or similar legal instrument.

Section 9. Amend § 2718, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2718. Information on licenses.

(c) The Division of Motor Vehicles shall provide a method for permitting a person applying for a license or identification card, or for renewal thereof, to have designated thereon that such person has a medical condition which may require special attention.

(5) For the purposes of this subsection "medical condition" ~~shall include~~ includes the execution of a pre-hospital ~~advanced~~ advance care directive ~~pursuant to § 9706(h) of Title 16, under Chapter 25 of Title 16 or a Delaware Medical Orders for Scope of Treatment under Chapter 25A of Title 16, and those orders from other states, which have become effective under Chapter 25A of Title 16.~~

Section 10. Amend § 3912, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3912. Confidentiality of records.

(a) (1) Records and information in the possession of the Department or anyone providing service to an alleged victim and the alleged victim's relatives is deemed confidential, and may be disclosed only under the following conditions:

b. With the consent of the recipient of the services, if the recipient has legal capacity. If the recipient lacks capacity, the recipient's ~~power of attorney~~ agent under Chapters 49 or 49A of Title 12, an agent or default surrogate under Chapter 25 of Title 16, or legal guardian may consent for the recipient.

Section 11. This Act takes effect on September 30, 2025.

Approved July 21, 2025