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A banner for 'Health Law Pulse' featuring a stethoscope, a green hexagonal object, and a pen on a document. The text 'Health Law Pulse' is written in a blue, serif font across the center.

Health Law Pulse

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Connecticut's New Health Care Representative Law

On October 1, 2006, Public Act 06-195 (the "Act") went into effect, changing Connecticut law regarding advanced health care decision making. Specifically, the Act combines the authority of the attorney-in-fact and the health care agent into a unified proxy known as the "health care representative." The new law also expands the scope of a living will, confers on the health care representative the authority to make all health care decisions for a person incapacitated to the point where he or she can no longer actively take part in decision making and cannot direct the physician as to his or her medical care, clarifies the authority and duties of a conservator and provides recognition of an individual's healthcare instructions or his or her appointment of a healthcare proxy that was executed in another state. The Act has not yet been interpreted by the courts, and the analysis contained in this article is based solely on a preliminary interpretation of the text of the Act.

APPOINTMENT OF HEALTH CARE REPRESENTATIVE

Prior to enactment of the Act, Section 1-54a of the Connecticut General Statutes ("C.G.S.") allowed an individual, who was unable to effectively evaluate information pertaining to a health care decision, to confer authority on another individual, known as an attorney-in-fact, to make general health care decisions other than the maintaining of physical comfort, the withdrawal of life support systems, or the withdrawal of nutrition or hydration. Furthermore, C.G.S. Section 19a-575a previously allowed, among other things, an individual to assign a health care agent to make end of life decisions for the individual in the event that he or she is incapacitated to the point where he or she can no longer actively take part in decision making and cannot direct the physician as to his or her medical

care. The Act now requires individuals to have only one document, appointing one person as a health care representative, to address *all* of their health care decisions. All forms assigning an attorney-in-fact or health care agent that were properly executed prior to October 1, 2006, remain valid and are subject to the prior laws and rules regarding healthcare decision making.

SCOPE OF LIVING WILL

C.G.S. Section 19a-575 was previously designed to only address the specific life support systems that an individual chose to have administered if he or she was incapable of providing informed consent. The Act now allows individuals to declare directions on all aspects of health care, including end of life decisions and mental health care, through the use of a living will.

CONSERVATOR DUTIES

The new law clarifies that a conservator needs to comply with a ward's (a person who has been legally placed under the care of a guardian or a court) individual health care instructions and other wishes that were expressed while the ward was capable of making such decisions, to the extent that the conservator has this knowledge, unless specified otherwise by a court of competent jurisdiction. As such, a conservator may not revoke the ward's advance directives unless authorized by an appointing court. Absent a court order to the contrary, a health care representative's decision takes precedence over that of a conservator.

REVOCAATION

The Act permits an individual to revoke a living will either orally or in writing. Whereas, the revocation of a health care representative appointment must be done in writing and signed by the individual seeking revocation and two witnesses. When the attending physician of the individual seeking revocation receives knowledge of the revocation, the individual's medical record must be updated accordingly. In the event that a health care professional unknowingly acts according to an appointment of a health care representative that has been revoked, the health care professional will not be subject to criminal or civil liability or discipline for unprofessional conduct for carrying out such advance directive.

OUT-OF-STATE HEALTHCARE DOCUMENTS

Under the Act, an individual's health care instructions or his or her appointment of a health care proxy that was executed under the laws of another state will be deemed valid as long as each was compliant with either the law of the other state or Connecticut law and is not contrary to Connecticut's public policy. A healthcare provider may rely on such health care instructions or recognize such appointment of a health care proxy based upon (i) an order or decision by a court of competent jurisdiction; (ii) presentation of a notarized statement from the patient or person offering the health care proxy that the proxy is valid under the laws of the state in which it was made and is not contrary to Connecticut's public policy; or (iii) the health care provider's good faith legal analysis.

The new law is intended to promote more efficient and effective means by which an individual's health care decisions are documented and recognized by health care professionals. Given the breadth of the changes in this area, it would likely be a good time for health care facilities and providers to consider revising their policies and procedures related to health care representatives. If you need assistance interpreting the Act or revising policies and procedures in accordance with the Act, or with any issues involving the documentation of health care decisions, please contact a member of Robinson & Cole's Health Law Group.

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