

# Uniform Recognition of Substitute Decision-Making Documents Act

All states have statutes which allow individuals to delegate substitute decision-making authority. In Idaho, the main examples are financial powers of attorney and medical powers of attorney and mental health powers of attorney. If the person executes the document in Idaho and stays in Idaho, the documents will be recognized.

However, in our mobile society, individuals move, travel, and may end up needing the document to be recognized in another jurisdiction. This Act is creating that ability. For financial powers of attorney, Idaho has adopted some of these provisions already in the Statutory Power of Attorney Act, and therefore this bill defers to those existing provisions. In the medical power of attorney, on the other hand, there are very limited provisions for recognition of documents from other jurisdictions. This creates great problems for individuals and medical providers when treatment is needed but the authorizing document is from another jurisdiction. This Act defers to the limited existing provisions in Idaho law, but adds major provisions. This Act protects good faith acceptance or rejection of the document. It also provides limits on what the entity or person to whom the document is presented can request, using the same limits as the existing Idaho Statutory Power of Attorney Act. This Act will allow individuals to have control over their financial and medical decisions and their choices of who can act when the individual cannot act.

Submitted as:

Idaho

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## Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Definitions.*]
- 2 As used in this chapter:
- 3 (1) “Decision maker” means a person authorized to act for an individual under a substitute
- 4 decision-making document, whether denominated a decision maker, agent, attorney in fact,
- 5 proxy, representative or by another title. The term includes an original decision maker, a co-
- 6 decision maker, a successor decision maker and a person to which a decision maker's
- 7 authority is delegated.
- 8 (2) “Good faith” means honesty in fact.
- 9 (3) “Health care” means a service or procedure to maintain, diagnose, treat or otherwise affect an
- 10 individual's physical or mental condition.
- 11 (4) “Person” means an individual, estate, business or nonprofit entity, public corporation,
- 12 government or governmental subdivision, agency, or instrumentality or other legal entity.
- 13 (5) “Personal care” means an arrangement or service to provide an individual shelter, food,
- 14 clothing, transportation, education, recreation, social contact or assistance with the activities
- 15 of daily living.

- 1 (6) “Property” means anything that may be subject to ownership, whether real or personal or  
2 legal or equitable, or any interest or right therein.  
3 (7) “Record” means information that is inscribed on a tangible medium or that is stored in an  
4 electronic or other medium and is retrievable in perceivable form.  
5 (8) “Substitute decision-making document” means a record created by an individual to authorize  
6 a decision maker to act for the individual with respect to property, health care or personal  
7 care.  
8

9 Section 2. [*Validity of substitute decision-making document.*]

- 10 (1) A substitute decision-making document for property executed outside this state is valid in  
11 this state if, when the document was executed, the execution complied with the law of the  
12 jurisdiction indicated in the document or, if no jurisdiction is indicated, the law of the  
13 jurisdiction in which the document was executed.  
14 (2) A substitute decision-making document for health care or personal care executed outside this  
15 state is valid in this state if, when the document was executed, the execution complied with:  
16 (a) The law of the jurisdiction indicated in the document or, if no jurisdiction is indicated,  
17 the law of the jurisdiction in which the document was executed; or  
18 (b) The law of this state other than this chapter.  
19 (3) Except as otherwise provided by law of this state other than this chapter, a photocopy or  
20 electronically transmitted copy of an original substitute decision-making document has the  
21 same effect as the original.  
22

23 Section 3. [*Meaning and effect of substitute decision-making document.*]

24 The meaning and effect of a substitute decision-making document and the authority of the  
25 decision maker are determined by the law of the jurisdiction indicated in the document or, if no  
26 jurisdiction is indicated, the law of the jurisdiction in which the document was executed.  
27

28 Section 4. [*Reliance upon substitute decision-making document.*]

- 29 (1) Except as otherwise provided for in [Insert citation (Uniform Power of Attorney Act) and  
30 (The Medical Consent and Natural Death Act)], a person that in good faith accepts a  
31 substitute decision-making document without actual knowledge that the document is void,  
32 invalid or terminated, or that the authority of the purported decision maker is void, invalid or  
33 terminated, may assume without inquiry that the document is genuine, valid and still in effect  
34 and that the decision maker's authority is genuine, valid and still in effect.  
35 (2) A person that is asked to accept a substitute decision-making document may request and  
36 without further investigation rely upon:  
37 (a) The decision maker's assertion of a fact concerning the individual for whom a decision  
38 will be made, the decision maker or the document;  
39 (b) A translation of the document if the document contains, in whole or in part, language  
40 other than English; and  
41 (c) An opinion of counsel regarding any matter of law concerning the document if the person  
42 provides in a record the reason for the request.  
43

44 Section 5. [*Obligation to accept substitute decision-making document.*]

- 45 (1) Except as otherwise provided in subsection (2) of this section or by law of this state other  
46 than this act, including [Insert citation (Uniform Power of Attorney Act)], a person that is

1 asked to accept a substitute decision-making document shall accept within a reasonable time  
2 a document that purportedly meets the validity requirements of section 2. The person may  
3 not require an additional or different form of document for authority granted in the document  
4 presented.

- 5 (2) A person that is asked to accept a substitute decision-making document is not required to  
6 accept the document if:
- 7 (a) The person otherwise would not be required in the same circumstances to act if requested  
8 by the individual who executed the document;
  - 9 (b) The person has actual knowledge of the termination of the decision maker's authority or  
10 the document;
  - 11 (c) The person's request under section 4(2) for the decision maker's assertion of fact, a  
12 translation or an opinion of counsel is refused;
  - 13 (d) The person in good faith believes that the document is not valid or the decision maker  
14 does not have the authority to request a particular transaction or action; or
  - 15 (e) The person makes, or has actual knowledge that another person has made, a report to the  
16 local office of adult protective services stating a belief that the individual for whom a  
17 decision will be made may be subject to abuse, neglect, exploitation or abandonment by  
18 the decision maker or a person acting for or with the decision maker.
- 19 (3) A person that in violation of the provisions of this section refuses to accept a substitute  
20 decision-making document is subject to:
- 21 (a) A court order mandating acceptance of the document; and
  - 22 (b) Liability for reasonable attorney's fees and costs incurred in an action or proceeding that  
23 mandates acceptance of the document.
- 24

25 Section 6. [*Remedies under other law.*]

26 The remedies under this act are not exclusive and do not abrogate any right or remedy under law  
27 of this state other than this chapter.

28

29 Section 7. [*Uniformity of application and construction.*]

30 In applying and construing this uniform act, consideration must be given to the need to promote  
31 uniformity of the law with respect to its subject matter among the states that enact it.

32

33 Section 8. [*Relation to electronic signatures in global and national commerce act.*]

34 This chapter modifies, limits or supersedes the electronic signatures in global and national  
35 commerce act, 15 U.S.C. section 7001 et seq., but does not modify, limit or supersede section  
36 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the  
37 notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

38

39 Section 9. [*Applicability.*]

40 This chapter applies to a substitute decision-making document created before, on or after the  
41 effective date of this chapter.