



2019-2020 General Assembly

SENATE BILL 704: COVID-19 Recovery Act , Sec. 4.10: Witness Requirement During State of Emergency/Health Care Power of Attorney and Advanced Directive for Natural Death

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| Committee: | | Date: | August 5, 2020 |
| Introduced by: | | Prepared by: | Jessica Boney |
| Analysis of: | Sec. 4.10 of S.L. 2020-3 | | Staff Attorney |

OVERVIEW: *Sec. 4.10 of S.L. 2020-3 amends the statutes related to health care powers of attorney and advanced directives for a natural death declaration to waive the requirement that the principal's signature be executed in the presence of two qualified witnesses. This waiver applies if the document is signed by the principal, properly acknowledged before a notary, and contains a short and plain statement indicating that the instrument was executed in accordance with this section. The waiver applies to those documents executed on or after May 4, 2020, and it expired on August 1, 2020.*

This section became effective May 4, 2020.

BILL ANALYSIS:

Sec. 4.10(a) amends the definitions of "health care power of attorney" and "qualified witness" found in G.S. 32A-16.

Sec. 4.10(b) of S.L. 2020-3 adds a new section G.S. 32A-16.1 to the statutes related to Health Care Powers of Attorney to waive the requirement that the principal's signature be executed in the presence of two qualified witnesses. This waiver applies if the document is signed by the principal, properly acknowledged before a notary, executed otherwise in accordance with health care powers of attorney statutes, and contains a short and plain statement indicating that the instrument was executed in accordance with the procedures of this section. The waiver of the presence of two qualified witnesses applies to those documents executed on or after May 4, 2020 and prior to termination of the State of Emergency declared by Governor Roy Cooper in Executive Order No. 116. All instruments made in accordance with this section and while this section is in effect remain effective and do not need to be reaffirmed.

Sec. 4.10(c) of S.L. 2020-3 amends the definition of "declaration" and the declarations an attending physician must follow in G.S. 90-321.

Sec. 4.10(d) adds a new section G.S. 90-321.1 to the statutes related to advanced directives for a natural death declaration to waive the requirement that the principal's signature be executed in the presence of two qualified witnesses. This waiver applies if the document is signed by the principal, properly acknowledged before a notary, executed otherwise in accordance with advanced directives for a natural death statute, and contains a short and plain statement indicating that the instrument was executed in accordance with the procedures of this section. The waiver of the presence of two qualified witnesses applies to those documents executed on or after May 4, 2020 and prior to termination of the State of

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Emergency declared by Governor Roy Cooper in Executive Order No. 116. All instruments made in accordance with this section and while this section is in effect remain effective and do not need to be reaffirmed.

EFFECTIVE DATE: This section became effective May 4, 2020, and the waivers of the required execution of the principal's signature in the presence of two qualified witnesses for health care power of attorney and advanced directives for a natural death declaration expired on August 1, 2020.