



HOUSE BILL 739: Update Reqs./Advance Health Care Directives.

2023-2024 General Assembly

Committee:	House Judiciary 1. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	May 1, 2023
Introduced by:	Rep. Sasser	Prepared by:	Debbie Griffiths Staff Attorney
Analysis of:	First Edition		

OVERVIEW: *House Bill 739 would do the following:*

- *Allow a Health Care Power of Attorney and an Advance Directive for a Natural Death to be signed in the presence of two qualified witnesses or be acknowledged before a notary public.*
- *The Secretary of State would be required to accept documents permitted to be filed in the Advance Health Care Directive Registry for registration in hard copy or electronic formats whether the document is notarized or not and to accept HIPAA waivers for registration.*
- *The Secretary of State would be authorized to remove records of deceased registrants.*
- *Make various conforming changes.*

PART I. HEALTH CARE POWERS OF ATTORNEY

CURRENT LAW:

Currently, a Health Care Power of Attorney must be signed in the presence of two qualified witnesses and be acknowledged before a notary public. Qualifications of a witness include not being related to the individual executing the form (the principal) and not inheriting under the principal's will or from the principal through intestate succession.

BILL ANALYSIS:

HB 739 would allow the principal to execute a Health Care Power of Attorney in the presence of two qualified witnesses or a notary public and would make conforming changes to the statutory Health Care Power of Attorney.

PART II. ADVANCE HEALTH CARE DIRECTIVES UNDER G.S. 90-321

CURRENT LAW:

Currently, an Advance Directive for a Natural Death (Living Will), must be signed in the presence of two witnesses who are not related to the individual signing the document (the declarant) and will not inherit from the declarant by will or intestate succession among other qualifications and who state that they believe the declarant to be of sound mind at the time of signing the Living Will.

BILL ANALYSIS:

HB 739 would allow the declarant to also sign the Advance Directive in the presence of a notary public.

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PART III. ELECTRONIC FILING OF DOCUMENTS WITH THE ADVANCE HEALTH CARE DIRECTIVE REGISTRY IN THE SECRETARY OF STATE'S OFFICE

CURRENT LAW:

Currently, documents permitted to be filed in the Advance Health Care Directive Registry in the Secretary of State's Office (the Registry) must be hard copies and must be notarized even when notarization is not required for the validity of the document. Documents currently permitted to be filed in the Registry include health care powers of attorney and declarations of desire for a natural death.

BILL ANALYSIS:

HB 739 would require the Secretary of State to:

- Accept hard copies or electronic copies of permitted documents for filing in the Registry.
- Accept HIPAA waivers for filing in the Registry.
- Accept permitted documents for filing in the Registry whether they are notarized or not.

It would also provide the Secretary of State the authority to remove documents of deceased registrants upon written notification of the registrant's death.

EFFECTIVE DATE: This act would become effective October 1, 2023.