



# HOUSE BILL 349: Reqs HC POA/Adv Direct/IEP Nurse Choice.

2025-2026 General Assembly

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<b>Committee:</b>	Senate Health Care. If favorable, re-refer to Judiciary. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	May 20, 2025
<b>Introduced by:</b>	Reps. Huneycutt, Potts, Cunningham, Campbell	<b>Prepared by:</b>	Debbie Griffiths* Staff Attorney
<b>Analysis of:</b>	PCS to Second Edition H349-CSCI-32		

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## **OVERVIEW:** *House Bill 349 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.*

## *In addition to the provisions of House Bill 349, the Proposed Committee Substitute (PCS) for House Bill 349 would do the following:*

- *Allow parent choice in nursing services for children with disabilities while in school, if certain conditions are met.*

## **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:**

The PCS to House Bill 349 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

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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:**

The PCS to House Bill 349 would allow the declarant to also sign the Advance Directive in the presence of a notary public.

## **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:**

The PCS to House Bill 349 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.

## **PART IV. PARENT CHOICE IN NURSING SERVICE PROVIDERS WHEN NURSING SERVICES ARE PROVIDED PURSUANT TO A CHILD'S INDIVIDUALIZED EDUCATION PROGRAM**

**CURRENT LAW:** The federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et. seq.*, requires schools receiving funds under the act to provide a free appropriate public education (FAPE) to eligible children with disabilities, including any necessary special education and related services.

The IDEA defines FAPE as special education and related services that meet all of the following:

- Have been provided at public expense, under public supervision and direction, and without charge.
- Meet the standards of the State educational agency.
- Include an appropriate preschool, elementary school, or secondary school education.
- Are provided in conformity with the requirements for an individualized education program (IEP).

An IEP is a written statement for each child with a disability that is developed, reviewed, and revised in accordance with law and includes descriptions of the following:

- The child's present level of performance, goals, and progress monitoring measures.
- The special education and related services and supplementary aids and services to be provided to the child, as well as any other accommodations.
- The extent the child will not participate with nondisabled children in the regular class.
- The timing of the services and modifications.

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Article 9 of Chapter 115C of the General Statutes enables the State Board of Education (SBE) and local education agencies (LEAs) to implement the IDEA in this State.

G.S. 115C-111.2 allows LEAs to contract with private special education facilities or service providers to provide any of the special education or related services that the public providers are unable to furnish.

**BILL ANALYSIS:** The PCS to House Bill 349 would require LEAs to contract with the parent's choice of nurse if the following five conditions are met:

- The child's IEP requires nursing services.
- The child received nursing services from the nurse (i) prior to the nursing services being required by the child's IEP or (ii) prior to the child enrolling at his or her current school.
- The parent's choice of nurse is employed by a nursing agency and willing to provide the nursing services required by the child's IEP.
- The nursing agency employing the parent's choice of nurse meets all standard contract terms required for any other nursing agency contracted by the local educational agency, including licensing and liability requirements.
- The contracted rate is equal to or less than the contracted rate of other nurses contracted by the local educational agency.

Nursing services would be defined as services that can only be provided by a nurse licensed in accordance with Article 9A of Chapter 90 of the General Statutes. The PCS to House Bill 349 would not limit the LEA's responsibility to provide FAPE.

**EFFECTIVE DATE:** Parts I through III of this act would become effective October 1, 2025. Part IV of this act would become effective when it becomes law and apply beginning with the 2025-2026 school year. The remainder of the act would become effective when it becomes law.

\*Brian Gwyn, Staff Attorney with the Legislative Analysis Division, substantially contributed to this summary.