



GENERAL STATUTES COMMISSION

300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

David C. Unwin
Revisor of Statutes

Caroline Pantoja
Assistant Revisor of Statutes

MEMORANDUM

To: House Judiciary 1
From: General Statutes Commission
Re: HB 1115 (GSC Advance Health Care Planning Documents)
Date: May 14, 2026

General Comments

This bill, recommended by the General Statutes Commission, would enact changes to simplify and update the laws regarding health care planning documents. The proposals contained in this bill are based on the General Statutes Commission's review of the 2023 Uniform Health-Care Decisions Act, pursuant to the Commission's statutory duty under G.S. 164-13 to receive and consider proposed changes in the law recommended by learned bodies. The bill would simplify execution requirements for healthcare powers of attorney, advance health care directives ("living wills"), and advance instructions for mental health treatment by allowing them to be either notarized or witnessed, rather than requiring that they be both notarized and witnessed. It would explain that these different types of documents can be combined and, if combined, would require that they be titled accordingly. It would also update the list of individuals who can provide consent on behalf of a patient who lacks capacity and has no advance health care planning documents in place and would clarify that a physician can rely on the statement of a listed individual to establish the individual's status in providing consent for the patient.

There is no known opposition to any part of this bill.

In addition to publishing all its drafts online, the General Statutes Commission circulated a draft to the Administrative Office of the Courts, American Association of Retired Persons, Arc of NC, Association for Home & Hospice Care of North Carolina, Disability Rights NC, Friends of Residents in Long-Term Care, Legal Aid of North Carolina, National Alliance on Mental Illness North Carolina, North Carolina Advocates for Justice, North Carolina Bar Association, North Carolina Conference of Clerks of Superior Court, North Carolina Department of Justice, North Carolina Department of Health and Human Services, North Carolina Health Care Facilities Association, North Carolina Healthcare Association, North Carolina Institute of Medicine, North Carolina Justice Center, North Carolina Medical Board, North Carolina Medical Society, North Carolina Office of the Secretary of State, North Carolina Serious Illness Coalition, and others.

Background

Under current law:

- Different types of advance health care planning documents may be combined. This bill would not create new authority to combine documents but more prominently explains the existing authority in the statutes, adding a requirement to clearly title a combined document and each individual type of document within it.
- Advance health care planning documents must be both notarized and witnessed. This bill would allow documents to be either notarized or witnessed.

- Those who can consent on behalf of a patient lacking advance health care documents or a court-appointed guardian are limited to a spouse, parents and adult children, adult siblings or, if none of those are available, another trusted individual. This bill would update those who can consent to also include a trusted individual who has an established relationship with the patient and has been living with the patient for at least one year, grandparents or adult grandchildren, an individual who has routinely assisted the patient with supported decision making, and adult stepchildren the patient actively parented and with whom the patient has an ongoing relationship.

Specific Comments

Part I of the bill contains findings that House Bill 349, introduced in 2025, makes changes to simplify execution requirements for healthcare powers of attorney and advance directives ("living wills"), two of the proposed changes also recommended by the General Statutes Commission in this bill, and that this bill provides for all the Commission's recommendations if House Bill 349 does or does not become law.

Part IA of the bill makes technical changes and explains that a health care power of attorney can be combined with other advance health care planning documents:

Section 1A(a) amends G.S. 32A-15 to make the following technical changes:

- In subsection (c), removes unnecessary language, adds the title of a cross-referenced Article, splits up a sentence for greater clarity, fixes the format of citations, and replaces legalese with plain English.
- In subsection (d), removes unnecessary language, adds the title of a cross-referenced Part, and fixes the format of a citation.

Section 1A(b) adds a new G.S. 32A-15.1 to prominently explain that a health care power of attorney can be combined with any other advance health care planning document and to require a combined document to be clearly titled as combined, with each type of planning document within it also individually titled.

Section 1A(c) amends G.S. 32A-16 to recodify definitions to achieve alphabetical order.

Section 1A(d) further amends G.S. 32A-16 to remove unnecessary language, fix punctuation, delete redundant terms, replace legalese with plain English, fix a relative pronoun, add a definition for "present condition," make a conforming change for consistency within the Article and with other statutes, and add a cross-reference.

Section 1A(e) amends G.S. 32A-19 to make the following changes:

- In subsection (a1), make a conforming change based on the addition of G.S. 32A-15.1 in Section 1A(b) of the bill and add a cross-reference.
- In subsection (b), replace legalese with plain English and remove language that is redundant with subsection (d) of this G.S. section.
- In subsections (c) and (d), replace legalese with plain English.
- In subsection (e), replace legalese with plain English and fix a relative pronoun.

Section 1A(f) amends subsection (a) of G.S. 32A-25.1 to replace legalese with plain English and remove unnecessary language and, in the language of the statutory form in this subsection, fix

punctuation, replace legalese with plain English, make stylistic changes, remove unnecessary language, fix relative pronouns, split up a sentence for greater clarity, change a phrase for consistency with other statutes, add a cross-reference, and make a conforming change for consistency within the Article.

Section 1A(g) repeals G.S. 32A-26 to conform to the addition of G.S. 32A-15.1 in Section 1A(b) of the bill.

Part IB of the bill makes technical changes, explains that an advance directive ("living will") can be combined with other advance health care planning documents, and updates the list of individuals who can consent on behalf of a patient who lacks capacity and has no living will in place:

Section 1B(a) updates the title of Article 23 of Chapter 90 of the General Statutes to better reflect current usage.

Section 1B(b) amends G.S. 90-320 to make the following technical changes:

- In subsection (a), add clarifying language.
- In subsection (b), remove unnecessary language, replace legalese with plain English, and make a stylistic change.

Section 1B(c) adds a new G.S. 90-320.1 to prominently explain that a living will can be combined with any other advance health care planning document and to require a combined document to be clearly titled as combined, with each type of planning document within it also individually titled.

Section 1B(d) amends G.S. 90-321 to make the following changes:

- In subsection (a), remove unnecessary language, make a cross-reference less specific, fix the format of a citation, and add a definition for "present condition."
- In subsection (b), move language from the end to the beginning of the subsection for greater clarity and modernize the format of a list.
- In subsection (c), modernize the format of a list, reword for greater clarity, make a conforming change for consistency within the Article and with other statutes, replace legalese with plain English, and add a cross-reference.
- In subsection (d1), replace legalese with plain English and, in the language of the statutory form in this subsection, replace ambiguous language, fix a relative pronoun, replace legalese with plain English, remove unnecessary language, make a conforming change for consistency with other statutes, add a cross-reference, and make stylistic changes.
- In subsection (e), replace legalese with plain English and reword for greater clarity.
- In subsection (f), fix the format of an internal citation and reorder language for greater clarity.
- In subsection (g), fix the format of an internal citation.
- In subsection (h), fix punctuation, fix a relative pronoun, split up a sentence for greater clarity, and fix punctuation.
- Repeal subsection (j) to conform to the addition of G.S. 90-320.1 in Section 1B(c) of the bill.
- In subsection (k), add clarifying language, remove unnecessary language, split up a sentence for greater clarity, change terms for internal consistency, fix punctuation, reorder wording for greater clarity, and fix an internal citation.

- In subsection (l), replace legalese with plain English.

Section 1B(e) amends G.S. 90-322 to make the following changes:

- In subsection (a), fix punctuation, move language from the end to the beginning of the subsection for greater clarity, modernize the format of a list, and add clarifying language.
- In subsection (b), change a term for internal consistency, add clarifying language, remove unnecessary language, split up a sentence for greater clarity, replace legalese with plain English, fix a cross-reference, fix punctuation, fix capitalization, and update the list of individuals who can consent on behalf of a patient, absent an agent named by the patient or a court-appointed guardian, in order of priority as follows:
 - The patient's spouse.
 - A majority of the patient's reasonably available parents and adult children.
 - An individual who has an established relationship with the patient, is acting in good faith on behalf of the patient, can reliably convey the patient's wishes, and has been living with the patient for at least one year.
 - A majority of the patient's reasonably available adult siblings.
 - A majority of the patient's reasonably available grandparents or adult grandchildren.
 - An individual who has routinely assisted the patient with supported decision making during the preceding six months.
 - A majority of the patient's reasonably available adult stepchildren the patient actively parented and with whom the patient has an ongoing relationship.
 - An individual not otherwise listed who has an established relationship with the patient, is acting in good faith on behalf of the patient, and can reliably convey the patient's wishes.
- Add a new subsection (c1) to clarify that a physician can rely on the statement of a listed individual to establish the individual's status as having authority to consent on behalf of the patient.
- In subsection (d), remove unnecessary language, add clarifying language, and fix a relative pronoun.

Part IC of the bill makes technical changes, simplifies execution requirements for an advance instruction for mental health treatment, and explains that it can be combined with other advance health care planning documents:

Section 1C(a) amends subsection (c) of G.S. 122C-71 to remove unnecessary language, add the title of a cross-referenced Article, split up a sentence for greater clarity, and fix the format of a citation.

Section 1C(b) adds a new G.S. 122C-71.1 to prominently explain that an advance instruction for mental health treatment can be combined with a general power of attorney or with any other advance health care planning document and to require an advance instruction combined with other advance health care planning documents to be clearly titled as combined, with each type of planning document within it also individually titled.

Section 1C(c) amends G.S. 122C-72 to modernize the format of definitions, allow either a notarized or witnessed execution of a document instead of requiring both, add clarifying language, delete a redundant term, fix punctuation, modernize the format of a list within the definitions, remove unnecessary language, change a term for internal consistency, add clarifying language,

make a conforming change for consistency within the Part, and add that a person appointed as an attorney-in-fact by the document is not a qualified witness.

Section 1C(d) amends G.S. 122C-73 to make the following changes:

- In subsection (d), add clarifying language.
- Repeal subsection (f) to conform to the addition of G.S. 122C-71.1 in Section 1C(b) of the bill.

Section 1C(e) amends G.S. 122C-77 to make the following changes:

- In subsection (a), update language for greater clarity.
- In subsection (b), remove unnecessary language and, in the language of the statutory form in this subsection, change terms for internal consistency, add clarifying language, add language to allow either a notarized or witnessed execution of a document instead of requiring both, modernize the format of a list, make conforming changes, delete redundant language, remove unnecessary language, and fix capitalization.

Part ID makes additional technical and conforming changes in other sections of the General Statutes:

Section 1D(a) amends G.S. 90-21.13 to make the following technical and conforming changes:

- In subsection (a), replace legalese with plain English, make stylistic changes, modernize the format of a list and reorganize the list for greater clarity, add clarifying language, make language gender neutral, remove unnecessary language, and make an internal conforming change.
- In subsection (b), fix a relative pronoun, make stylistic changes, add an internal cross reference for greater clarity, remove unnecessary language, move language from the end to the middle of the subsection for greater clarity, replace legalese with plain English, fix punctuation, and delete redundant language.
- In subsection (c), add clarifying language, remove unnecessary language, split up a sentence for greater clarity, replace legalese with plain English, fix capitalization, and update the list of individuals who can consent on behalf of a patient to conform to changes made to G.S. 90-322 in Section 1B(e) of the bill.
- In subsection (c1), remove unnecessary language and split up a sentence for greater clarity.
- To conform to changes made to G.S. 90-322 in Section 1B(e) of the bill, add a new subsection (c2) to clarify that a physician can rely on the statement of an individual to establish the individual's status as having authority to consent on behalf of the patient.
- In subsection (d), change "no . . . may" to "no . . . shall" to conform to this State's drafting conventions, replace legalese with plain English, fix punctuation, and make a stylistic change.
- In subsection (e), make a stylistic change, reorder cross references to list them in order of the General Statutes, and remove unnecessary language.

Section 1D(b) repeals G.S. 130A-466(b), which requires notarization of any document submitted to the Secretary of State for filing in the Advance Health Care Directive Registry. This requirement would be repealed to conform to the changes in this bill allowing either notarization or witnessing of a document.

Part II of the bill simplifies execution requirements for healthcare powers of attorney and advance directives ("living wills"):

Section 2.1(a) amends G.S. 32A-16(3), as amended by Section 1A(d) of the bill, to allow either a notarized or witnessed execution of a health care power of attorney, instead of requiring both.

Section 2.1(b) amends G.S. 32A-25.1(a), as amended by Section 1A(f) of the bill, to make conforming changes to the statutory form for a health care power of attorney to allow either a notarized or witnessed execution of a document instead of both, and removes reference to a specific web page uniform resource locator.

Section 2.2(a) through (b) amends G.S. 90-321(c)(3), as amended by Section 1B(d) of the bill, and G.S. 90-321(a)(1a), to allow either a notarized or witnessed execution of an advance directive ("living will"), instead of requiring both.

Section 2.2(c) amends G.S. 90-321(d1), as amended by Section 1B(d) of the bill, to make conforming changes to the statutory form for an advance directive ("living will") to allow either a notarized or witnessed execution of a document instead of requiring both, and removes reference to a specific web page uniform resource locator.

Part III of the bill provides a contingent repeal and the effective date of the bill:

Section 3(a) provides that, if House Bill 349, 2025 regular session, becomes law, Part II of the bill is repealed because Part II makes changes that are also made in House Bill 349.

Section 3(b) provides that this act becomes effective January 1, 2027, and applies to documents executed on or after that date. It further clarifies that this act does not affect the validity of documents executed prior to January 1, 2027.