

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 846

Short Title: Advance Instr./Mental Health Treatment/AB.

(Public)

Sponsors: Senators Lucas, Hobbs, Parnell, Dannelly, and Ballance.

Referred to: Children and Human Resources

April 26, 1995

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH AN ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 122C of the General Statutes is amended by designating G.S. 122C-51 through G.S. 122C-80 as "Part 1".

Sec. 2. Article 3 of Chapter 122C of the General Statutes is amended by adding the following new Part to read:

"PART 2. ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT.

"§ 122C-81. Purpose.

(a) The General Assembly recognizes as a matter of public policy the fundamental right of an individual to control the decisions relating to medical care, and that this right may be exercised on behalf of the individual by an agent chosen by the individual.

(b) The purpose of this Part is to establish an additional, nonexclusive method for an individual to exercise the right to consent to or refuse mental health treatment when the individual lacks sufficient understanding or capacity to make or communicate mental health treatment decisions.

(c) This Part is intended and shall be construed to be consistent with the provisions of Article 3 of Chapter 32A of the General Statutes, provided that in the event of a

1 conflict between the provisions of this Part and Article 3 of Chapter 32A, the provisions
2 of this Part control.

3 **"§ 122C-82. Definitions.**

4 As used in this Part, unless the context clearly requires otherwise, the following terms
5 have the meanings specified:

6 (1) 'Advance Instruction' means a written instrument, signed by two
7 qualified witnesses, that makes a declaration of preferences or provides
8 information regarding mental health treatment and that may appoint an
9 attorney-in-fact.

10 (2) 'Attending physician' means the physician who has primary
11 responsibility for the care and treatment of the principal.

12 (3) 'Attorney-in-fact' means an adult validly appointed under G.S. 122C-85
13 to make mental health treatment decisions for a principal under an
14 advance instruction for mental health treatment and also means an
15 alternative attorney-in-fact.

16 (4) 'Incapable' means that, in the opinion of a qualified crisis services
17 professional and a physician or eligible psychologist, the person
18 currently lacks the capacity to make and communicate mental health
19 treatment decisions.

20 (5) 'Mental health treatment' means electroconvulsive treatment, treatment
21 of mental illness with psychotropic medication, and admission to and
22 retention in a facility for care or treatment of mental illness.

23 (7) 'Principal' means the person making the advance instruction.

24 (8) 'Qualified witness' means a witness who affirms that the principal is
25 personally known to the witness, that the principal signed or
26 acknowledged the principal's signature on the advance instruction in the
27 presence of the witness, that the witness believes the principal to be of
28 sound mind and not to be under duress, fraud, or undue influence, and
29 that the witness is not:

30 a. The attending physician or mental health service provider or a
31 relative of the physician or provider; or

32 b. An owner, operator or relative of an owner or operator of a health
33 care facility in which the principal is a patient or resident.

34 **"§ 122C-83. Scope, use, and authority of advance instruction for mental health**
35 **treatment.**

36 (a) Any adult of sound mind may make an advance instruction of information or
37 preferences regarding mental health treatment. The information or preferences may
38 include consent to or refusal of mental health treatment. The advance instruction may
39 also appoint an attorney-in-fact.

40 (b) Information and preferences expressed in an advance instruction may include,
41 but are not limited to, the names and telephone numbers of individuals to be contacted in
42 case of mental health crisis, situations that may cause the principal to experience a mental
43 health crisis, responses that may assist the principal to remain in the principal's home

1 during a mental health crisis, the types of assistance that may help stabilize the principal
2 if it becomes necessary to enter a facility, and medications that the principal is taking or
3 has taken in the past and the effects of those medications.

4 (c) A person shall not be required to execute or to refrain from executing an
5 advance instruction as a criterion for insurance, as a condition for receiving mental or
6 physical health services, as a condition for receiving privileges while in a facility, or as a
7 condition of discharge from a facility.

8 (d) A principal may nominate, by advance instruction for mental health treatment,
9 the guardian of the person of the principal if a guardianship proceeding is thereafter
10 commenced. The court shall make its appointment in accordance with the principal's
11 most recent nomination in an unrevoked advance instruction for mental health treatment,
12 except for good cause shown.

13 (e) If, following the execution of an advance instruction for mental health
14 treatment, a court of competent jurisdiction appoints a guardian of the person of the
15 principal, or a general guardian with powers over the person of the principal, the advance
16 instruction for mental health treatment shall cease to be effective upon the appointment
17 and qualification of the guardian.

18 (f) An advance instruction for mental health treatment may be combined with or
19 incorporated into a health care power of attorney or general power of attorney that is
20 executed in accordance with the requirements of Chapter 32A of the General Statutes.

21 **§ 122C-84. Effectiveness and duration; revocation.**

22 (a) An advance instruction becomes operative when it is delivered to the
23 principal's physician or other mental health treatment provider and remains valid until
24 revoked or expired. The physician or provider shall act in accordance with an operative
25 advance instruction when the principal has been found to be incapable. The physician or
26 provider shall continue to obtain the principal's informed consent to all mental health
27 treatment decisions if the principal is capable of providing informed consent or refusal.

28 (b) Upon being presented with an advance instruction, a physician or other
29 provider shall make the advance instruction a part of the principal's medical record.
30 When acting under authority of an advance instruction, a physician or provider shall
31 comply with it to the fullest extent possible, unless compliance is not consistent with:

32 (1) Best medical practice to benefit the principal;

33 (2) The availability of treatments requested; and

34 (3) Applicable law.

35 If the physician or other provider is unwilling at any time to comply with the an advance
36 instruction for one or more of the reasons set out in subdivisions (1) through (3) of this
37 subsection, the physician or provider shall promptly notify the principal and, if
38 applicable, the attorney-in-fact and document the reason for not complying and the
39 notification in the principal's medical record.

40 (c) An advance instruction for mental health treatment continues in effect for a
41 period of two years or until revoked. The authority of a named attorney-in-fact and any
42 alternative attorney-in-fact named in the advance instruction continues in effect as long as

1 the advance instruction appointing the attorney-in-fact is in effect or until the attorney-in-
2 fact has withdrawn.

3 (d) The physician or provider may subject the principal to mental health treatment
4 in a manner contrary to the principal's wishes as expressed in an advance instruction for
5 mental health treatment only:

6 (1) If the principal is committed to a 24-hour facility pursuant to Article 5
7 of G.S. 122C and treatment is authorized in compliance with G.S.
8 122C-57 and administrative rule; or

9 (2) In cases of emergency endangering life or health.

10 (e) An advance instruction does not limit any authority provided in Article 5 of
11 G.S. 122C either to take a person into custody, or to admit, retain, or treat a person in a
12 facility.

13 (f) An advance instruction may be revoked in whole or in part at any time by the
14 principal if the principal is capable. A revocation is effective when a capable principal
15 communicates the revocation to the attending physician or other provider. The attending
16 physician or other provider shall note the revocation as part of the principal's medical
17 record.

18 (g) A physician or provider who administers or does not administer mental health
19 treatment according to and in good faith reliance upon the validity of an advance
20 instruction is not subject to criminal prosecution, civil liability, or professional
21 disciplinary action resulting from a subsequent finding of an advance instruction's
22 invalidity.

23 **"§ 122C-85. Scope of authority of attorney-in-fact; powers and duties; limitation on**
24 **liability.**

25 (a) An advance instruction may designate a competent adult to act as attorney-in-
26 fact to make decisions about mental health treatment. An alternative attorney-in-fact may
27 also be designated to act as attorney-in-fact if the original designee is unable or unwilling
28 to act at any time. An attorney-in-fact who has accepted the appointment in writing may
29 make decisions about mental health treatment on behalf of the principal only when the
30 principal is incapable. The decisions shall be consistent with any desires the principal
31 has expressed in the advance instruction.

32 (b) None of the following may serve as attorney-in-fact:

33 (1) The attending physician or mental health service provider or an
34 employee of the physician or provider, if the physician, provider, or
35 employee is unrelated to the principal by blood, marriage, or adoption.

36 (2) An owner, operator, or employee of a health care facility in which the
37 principal is a patient or resident, if the owner, operator, or employee is
38 unrelated to the principal by blood, marriage, or adoption.

39 (c) The attorney-in-fact shall not have authority to make mental health treatment
40 decisions unless the principal is incapable.

41 (d) The attorney-in-fact is not, as a result of acting in that capacity, personally
42 liable for the cost of treatment provided to the principal.

1 (e) Except to the extent the right is limited by the advance instruction or any
2 federal law, an attorney-in-fact has the same right as the principal to receive information
3 regarding the proposed mental health treatment and to receive, review, and consent to
4 disclosure of medical records relating to that treatment. This right of access does not
5 waive any evidentiary privilege.

6 (f) In exercising authority under the advance instruction, the attorney-in-fact shall
7 act consistently with the desires of the principal as expressed in the advance instruction.
8 If the principal's desires are not expressed in the advance instruction and are not
9 otherwise known by the attorney-in-fact, the attorney-in-fact shall act in what the
10 attorney-in-fact in good faith believes to be the manner in which the principal would act
11 if the principal was not incapable.

12 (g) The appointment of an attorney-in-fact shall not revoke, restrict, or otherwise
13 affect any nonmental health treatment powers granted by the principal to a health care
14 agent pursuant to a health care power of attorney or attorney-in-fact pursuant to a general
15 power of attorney; provided that the mental health treatment powers granted to the
16 attorney-in-fact shall be superior to any similar powers granted by the principal to a
17 health care agent pursuant to a health care power of attorney or an attorney-in-fact
18 pursuant to a general power of attorney.

19 (h) An attorney-in-fact is not subject to criminal prosecution, civil liability, or
20 professional disciplinary action for any action taken in good faith pursuant to an advance
21 instruction for mental health treatment.

22 (i) An attorney-in-fact may withdraw by giving notice to the principal. If a
23 principal is incapable, the attorney-in-fact may withdraw by giving notice to the attending
24 physician or provider. The attending physician or provider shall note the withdrawal as
25 part of the principal's medical record.

26 (j) A person who has withdrawn under the provision of subsection (h) of this
27 section may rescind the withdrawal by executing an acceptance after the date of the
28 withdrawal. The acceptance shall be in the same form as provided by G.S. 122C-86 for
29 accepting an appointment. A person who rescinds a withdrawal shall give notice to the
30 principal if the principal is capable or to the principal's health care provider if the
31 principal is incapable.

32 **"§ 122C-86. Penalty.**

33 It is a Class 2 misdemeanor for a person without authorization of the principal
34 willfully to alter, forge, conceal, or destroy an instrument, the reinstatement or revocation
35 of an instrument, or any other evidence or document reflecting the principal's desires and
36 interests, with the intent or affect of affecting a mental health treatment decision."

37 Sec. 3. G.S. 122C-57 reads as rewritten:

38 **"§ 122C-57. Right to treatment and consent to treatment.**

39 (a) Each client who is admitted to and is receiving services from a facility has the
40 right to receive age-appropriate treatment for mental health, mental retardation, and
41 substance abuse illness or disability. Each client within 30 days of admission to a facility
42 shall have an individual written treatment or habilitation plan implemented by the

1 facility. The client and ~~his~~the client's legally responsible person shall be informed in an
2 advance of the potential risks and alleged benefits of the treatment choices.

3 (b) Each client has the right to be free from unnecessary or excessive medication.
4 Medication shall not be used for punishment, discipline, or staff convenience.

5 (c) Medication shall be administered in accordance with accepted medical
6 standards and only upon the order of a physician as documented in the client's record.

7 (d) Each voluntarily admitted ~~client or his~~client, the client's legally responsible
8 ~~person~~person, a health care agent named pursuant to a valid health care power of
9 attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental
10 health treatment has the right to consent to or refuse any treatment offered by the facility.
11 Consent may be withdrawn at any time by the person who gave the consent. If treatment
12 is refused, the qualified professional shall determine whether treatment in some other
13 modality is possible. If all appropriate treatment modalities are refused, the voluntarily
14 admitted client may be discharged. In an emergency, a voluntarily admitted client may be
15 administered treatment or medication, other than those specified in subsection (f) of this
16 section, despite the refusal of the ~~client or his~~client, the client's legally responsible ~~person~~
17 person, a health care agent named pursuant to a valid health care power of attorney, or an
18 attorney-in-fact named pursuant to a valid advance instruction for mental health
19 treatment. The Commission may adopt rules to provide a procedure to be followed when
20 a voluntarily admitted client refuses treatment.

21 (e) In the case of an involuntarily committed client, treatment measures other than
22 those requiring express written consent as specified in subsection (f) of this section may
23 be given despite the refusal of the ~~client or his~~client, the client's legally responsible ~~person~~
24 person, a health care agent named pursuant to a valid health care power of attorney, or an
25 attorney-in-fact named pursuant to a valid advance instruction for mental health treatment
26 in the event of an emergency or when consideration of side effects related to the specific
27 treatment measure is given and in the professional judgment, as documented in the
28 client's record, of the treating physician and a second physician, who is either the director
29 of clinical services of the facility, or ~~his~~ designee, either:

- 30 (1) The client, without the benefit of the specific treatment measure, is
31 incapable of participating in any available treatment plan which will
32 give ~~him~~the client a realistic opportunity of improving ~~his~~the client's
33 condition;
- 34 (2) There is, without the benefit of the specific treatment measure, a
35 significant possibility that the client will harm ~~himself~~ or others before
36 improvement of ~~his~~the client's condition is realized.

37 (f) Treatment involving electroshock therapy, the use of experimental drugs or
38 procedures, or surgery other than emergency surgery may not be given without the
39 express and informed written consent of the ~~client or his~~client, the client's legally
40 responsible ~~person~~person, a health care agent named pursuant to a valid health care
41 power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction
42 for mental health treatment. This consent may be withdrawn at any time by the person
43 who gave the consent. The Commission may adopt rules specifying other therapeutic and

1 diagnostic procedures that require the express and informed written consent of the ~~client~~
2 ~~or his client,~~ the client's legally responsible person-person, a health care agent named
3 pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant
4 to a valid advance instruction for mental health treatment prior to their initiation."

5 Sec. 4. This act becomes effective January 1, 1996.