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

(Public)

Sponsors:

Referred to:

April 26, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH AN ADVANCE INSTRUCTION FOR MENTAL HEALTH
3 TREATMENT.

4 The General Assembly of North Carolina enacts:

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

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

9 **"PART 2. ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT.**

10 **"§ 122C-81. Purpose.**

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

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

1 (c) This Part is intended and shall be construed to be consistent with the provisions
2 of Article 3 of Chapter 32A of the General Statutes, provided that in the event of a
3 conflict between the provisions of this Part and Article 3 of Chapter 32A, the provisions
4 of this Part control.

5 **"§ 122C-82. Definitions.**

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

- 8 (1) 'Advance Instruction' means a written instrument, signed by two
9 qualified witnesses, that makes a declaration of preferences or provides
10 information regarding mental health treatment and that may appoint an
11 attorney-in-fact.
- 12 (2) 'Attending physician' means the physician who has primary
13 responsibility for the care and treatment of the principal.
- 14 (3) 'Attorney-in-fact' means an adult validly appointed under G.S. 122C-85
15 to make mental health treatment decisions for a principal under an
16 advance instruction for mental health treatment and also means an
17 alternative attorney-in-fact.
- 18 (4) 'Incapable' means that, in the opinion of a physician or eligible
19 psychologist, the person currently lacks the capacity to make and
20 communicate mental health treatment decisions.
- 21 (5) 'Mental health treatment' means electroconvulsive treatment, treatment
22 of mental illness with psychotropic medication, and admission to and
23 retention in a facility for care or treatment of mental illness.
- 24 (6) 'Principal' means the person making the advance instruction.
- 25 (7) 'Qualified witness' means a witness who affirms that the principal is
26 personally known to the witness, that the principal signed or
27 acknowledged the principal's signature on the advance instruction in the
28 presence of the witness, that the witness believes the principal to be of
29 sound mind and not to be under duress, fraud, or undue influence, and
30 that the witness is not:
- 31 a. The attending physician or mental health service provider or a
32 relative of the physician or provider; or
- 33 b. An owner, operator or relative of an owner or operator of a health
34 care facility in which the principal is a patient or resident.

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

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

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

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

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

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

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

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

22 **"§ 122C-84. Effectiveness and duration; revocation.**

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

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

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

34 (2) The availability of treatments requested; and

35 (3) Applicable law.

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

41 (c) An advance instruction for mental health treatment continues in effect for a
42 period of two years, unless revoked. The authority of a named attorney-in-fact and any
43 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) Except as provided in subsection (b) of this section, the physician or provider
4 may subject the principal to mental health treatment in a manner contrary to the
5 principal's wishes as expressed in an advance instruction for mental health treatment
6 only:

7 (1) If the principal is committed to a 24-hour facility pursuant to Article 5
8 of G.S. 122C and treatment is authorized in compliance with G.S.
9 122C-57 and administrative rule; or

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

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

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

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

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

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

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

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

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

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

42 (d) The attorney-in-fact is not, as a result of acting in that capacity, personally
43 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 (i) 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 or similar form as provided for in G.S.
29 122C-87 for accepting an appointment. A person who rescinds a withdrawal shall give
30 notice to the principal if the principal is capable or to the principal's health care provider
31 if the 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 effect of affecting a mental health treatment decision.

37 **"§ 122C-87. Statutory form for advance instruction for mental health treatment.**

38 The use of the following or similar form in the creation of an advance instruction for
39 mental health treatment is lawful, and when used, it shall be construed in accordance with
40 the provisions of this Article.

41
42 **' ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT**

I, _____, being an adult of sound mind, willfully and voluntarily make this advance directive for mental health treatment to be followed if it is determined by a physician or eligible psychologist that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means convulsive treatment, treatment of mental illness with psychoactive medication, and admission to and retention in a facility.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

I consent to the administration of the following medications:

I do not consent to the administration of the following medications:

Conditions or limitations:

CONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:

____ I consent to the administration of convulsive treatment.

____ I do not consent to the administration of convulsive treatment.

Conditions or limitations:

ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding admission to and retention in a health care facility for mental health treatment are as follows:

I consent to being admitted to a health care facility for mental health treatment.

My facility preference is

I do not consent to being admitted to a health care facility for mental health treatment.

This directive cannot, by law, provide consent to retain me in a facility for more than 10 days.

Conditions or limitations:

ADDITIONAL PREFERENCES OR INSTRUCTIONS

These preferences or instructions shall apply during the entire length of my incapacity.

In case of mental health crisis, please contact:

1. Name:

Home Address:

Home Telephone Number:

Work Telephone Number:

Relationship to Me:

2. Name:

Home Address:

Home Telephone Number:

Work Telephone Number:

Relationship to Me:

3. My Physician:

Name: Telephone Number:

4. My Therapist:

Name: Telephone Number:

The following may cause me to experience a mental health crisis:

The following may help me avoid a hospitalization:

I generally react to being hospitalized as follows:

Staff of the hospital or crisis unit can help me by doing the following:

I give permission for the following person or people to visit me:

Other preferences or instructions:

I have attached an additional sheet of preferences or instructions to be followed and considered part of this advance directive.

ATTORNEY-IN-FACT

1 I hereby appoint:

2 Name:

3 Home Address:

4 Home Telephone Number:

Work Telephone Number:

5 to act as my attorney-in-fact to make decisions regarding my mental health treatment if I
6 become incapable of giving or withholding informed consent for that treatment.

7 If the person named above refuses or is unable to act on my behalf, or if I revoke that
8 person's authority to act as my attorney-in-fact, I authorize the following person to act as
9 my attorney-in-fact:

10 Name:

11 Home Address:

12 Home Telephone Number:

Work Telephone Number:

13 My attorney-in-fact is authorized to make decisions that are consistent with the wishes I
14 have expressed in this advance directive or, if not expressed, as are otherwise known by
15 my attorney-in-fact, my attorney-in-fact is to act in what he or she believes to be my best
16 interests.

17 If it becomes necessary for the court to appoint a guardian for me, I hereby nominate my
18 attorney-in-fact to serve in that capacity.

19 By signing here, I indicate that I am mentally alert and competent, fully informed as to
20 the contents of this document, and understand the full import of this grant of powers to
21 my attorney-in-fact.

22
23 Signature of Principal

Date

24 **AFFIRMATION OF WITNESSES**

25 We affirm that the principal is personally known to us, that the principal signed or
26 acknowledged the principal's signature on this advance directive for mental health
27 treatment in our presence, that the principal appears to be of sound mind and not under
28 duress, fraud, or undue influence, and that neither of us is:

29 A person appointed as an attorney-in-fact by this document;

30 The principal's attending physician or mental health service provider or a relative of the
31 physician or provider;

32 The owner, operator, or relative of an owner or operator of a facility in which the
33 principal is a patient or resident; or

34 A person related to the principal by blood, marriage, or adoption.

35 Witnessed by:

36 Witness: _____

Date:

37 Witness: _____

Date:

38 STATE OF NORTH CAROLINA

39 COUNTY OF _____

40 **ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT**

41 I accept this appointment and agree to serve as attorney-in-fact to make decisions about
42 mental health treatment for the principal. I understand that I have a duty to act consistent
43 with the desires of the principal as expressed in this appointment. I understand that this

1 document gives me authority to make decisions about mental health treatment only while
 2 the principal is incapable as determined by a qualified crisis services professional and a
 3 physician or eligible psychologist. I understand that the principal may revoke this
 4 advance directive in whole or in part at any time and in any manner when the principal is
 5 not incapable.

6
 7 Signature of Attorney-in-fact _____ Date

8
 9 Signature of Alternative Attorney-in-fact _____ Date".

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

11 "**§ 122C-57. Right to treatment and consent to treatment.**

12 (a) Each client who is admitted to and is receiving services from a facility has the
 13 right to receive age-appropriate treatment for mental health, mental retardation, and
 14 substance abuse illness or disability. Each client within 30 days of admission to a facility
 15 shall have an individual written treatment or habilitation plan implemented by the
 16 facility. The client and ~~his~~the client's legally responsible person shall be informed in an
 17 advance of the potential risks and alleged benefits of the treatment choices.

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

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

22 (d) Each voluntarily admitted ~~client or his client,~~ the client's legally responsible
 23 ~~person~~person, a health care agent named pursuant to a valid health care power of
 24 attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental
 25 health treatment has the right to consent to or refuse any treatment offered by the facility.
 26 Consent may be withdrawn at any time by the person who gave the consent. If treatment
 27 is refused, the qualified professional shall determine whether treatment in some other
 28 modality is possible. If all appropriate treatment modalities are refused, the voluntarily
 29 admitted client may be discharged. In an emergency, a voluntarily admitted client may be
 30 administered treatment or medication, other than those specified in subsection (f) of this
 31 section, despite the refusal of the ~~client or his client,~~ the client's legally responsible ~~person~~
 32 person, a health care agent named pursuant to a valid health care power of attorney, or an
 33 attorney-in-fact named pursuant to a valid advance instruction for mental health
 34 treatment. The Commission may adopt rules to provide a procedure to be followed when
 35 a voluntarily admitted client refuses treatment.

36 (e) In the case of an involuntarily committed client, treatment measures other than
 37 those requiring express written consent as specified in subsection (f) of this section may
 38 be given despite the refusal of the ~~client or his client,~~ the client's legally responsible ~~person~~
 39 person, a health care agent named pursuant to a valid health care power of attorney, or an
 40 attorney-in-fact named pursuant to a valid advance instruction for mental health treatment
 41 in the event of an emergency or when consideration of side effects related to the specific
 42 treatment measure is given and in the professional judgment, as documented in the

1 client's record, of the treating physician and a second physician, who is either the director
2 of clinical services of the facility, or ~~his~~-designee, either:

3 (1) The client, without the benefit of the specific treatment measure, is
4 incapable of participating in any available treatment plan which will
5 give ~~him~~-the client a realistic opportunity of improving ~~his~~-the client's
6 condition;

7 (2) There is, without the benefit of the specific treatment measure, a
8 significant possibility that the client will harm ~~himself~~ or others before
9 improvement of ~~his~~-the client's condition is realized.

10 (f) Treatment involving electroshock therapy, the use of experimental drugs or
11 procedures, or surgery other than emergency surgery may not be given without the
12 express and informed written consent of the ~~client or his~~-client, the client's legally
13 responsible ~~person~~-person, a health care agent named pursuant to a valid health care
14 power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction
15 for mental health treatment. This consent may be withdrawn at any time by the person
16 who gave the consent. The Commission may adopt rules specifying other therapeutic and
17 diagnostic procedures that require the express and informed written consent of the ~~client~~
18 ~~or his~~-client, the client's legally responsible ~~person~~-person, a health care agent named
19 pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant
20 to a valid advance instruction for mental health treatment prior to their initiation."

21 Sec. 4. This act becomes effective January 1, 1997.