

Senate Bill 224

By: Senators Grant of the 25th, Unterman of the 45th and Seay of the 34th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 37 of the Official Code of Georgia Annotated, relating to mental health, so
2 as to provide a means for a competent adult to control either directly through instructions
3 written in advance or indirectly through appointing an agent to make mental health care
4 decisions on behalf of such person according to a written psychiatric advance directive; to
5 provide a short title; to provide definitions; to provide for standards and limitations with
6 respect to psychiatric advance directives; to provide for the responsibilities and duties of
7 physicians and other mental health care providers and agents under psychiatric advance
8 directives; to provide a statutory psychiatric advance directive form; to provide for
9 construction of such form; to provide for applicability; to provide for statutory construction
10 of chapter; to provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended by
14 adding a new chapter to the end of such title to read as follows:

15 "CHAPTER 11

16 37-11-1.

17 This chapter shall be known and may be cited as the 'Psychiatric Advance Directive Act.'

18 37-11-2.

19 As used in this chapter, the term:

20 (1) 'Attending physician' means the physician who has primary responsibility at the time
21 of reference for the treatment and care of the patient.

22 (2) 'Competent adult' means a person of sound mind who is 18 years of age or older.

(3) 'Declarant' means the person executing a psychiatric advance directive pursuant to this chapter.

(4) 'Hospital' means:

(A) A facility which has a valid permit or provisional permit issued under Chapter 7 of Title 31 and which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons;

(B) A state owned, state operated, or private facility providing services which include, but are not limited to, inpatient care and the diagnosis, care, and treatment or habilitation of persons with:

(i) Mental or emotional illness;

(ii) Developmental disability, as defined in Code Section 37-2-2; or

(iii) Addictive disease, as defined in Code Section 37-2-2.

Such hospital may also provide or manage state owned or operated programs in the community;

(C) An emergency receiving facility, as defined in Code Section 37-3-1; and

(D) An evaluating facility, as defined in Code Section 37-3-1.

(5) 'Incapable' means that, in the opinion of the court in a guardianship proceeding or in the opinions of two physicians or a physician and a psychologist who have personally examined the patient, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health care decisions.

(6) 'Mental health care' means any care, treatment, service, or procedure to maintain, diagnose, treat, or provide for the patient's mental health.

(7) 'Mental health care agent' or 'agent' means a person appointed by a declarant pursuant to this chapter to act for and on behalf of the declarant to make decisions related to mental health care when the declarant is incapable. This term shall include any alternate mental health care agent appointed by the declarant.

(8) 'Mental health care provider' or 'provider' means the attending physician and any other person administering mental health care to the patient at the time of reference who is licensed, certified, or otherwise authorized or permitted by law to administer mental health care in the ordinary course of business or the practice of a profession, including but not limited to psychologists, clinical social workers, and clinical nurse specialists in psychiatric/mental health, and any person employed by or acting for any such authorized person.

(9) 'Patient' means the declarant.

(10) 'Physician' means a person licensed to practice medicine under Article 2 of Chapter 34 of Title 43.

(11) 'Prospective consent' means consent given by a competent adult that is valid for treatment at a time when a person is incapable.

(12) 'Psychiatric advance directive' or 'directive' means an agency governing any type of mental health care for and on behalf of a patient and refers to the power of attorney or other written instrument defining the agency, or the agency itself, as appropriate to the context.

(13) 'Skilled nursing facility' means a facility which has a valid permit or provisional permit issued under Chapter 7 of Title 31 and which provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis.

(14) 'State-wide hot line' means a state-wide, toll-free hot line available 24 hours per day, 7 days per week, managed and funded by the State of Georgia for mental health and addiction crises.

37-11-3.

(a) A competent adult may execute a psychiatric advance directive of preferences or instructions regarding his or her mental health care. The directive may include, but is not limited to, consent to or refusal of specified mental health care.

(b)(1) A competent adult may choose not to appoint a mental health agent, in which case the instructions and desires of the declarant shall be followed.

(2) A psychiatric advance directive may designate a competent adult to act as agent to make decisions about mental health care for the declarant. An alternative agent may also be designated to act as agent if the original designee is unable or unwilling to act at any time. An agent who has accepted the appointment in writing may make decisions about mental health care on behalf of the declarant only when the declarant is incapable. In exercising authority under the directive, the agent shall make such decisions consistent with the instructions and desires of the declarant, as expressed in the directive.

(c) A directive shall be effective only if it is signed by the declarant and two competent adult witnesses. The witnesses shall attest that the declarant is known to them, signed the directive in their presence, appears to be of sound mind, and is not under duress, fraud, or undue influence. Persons specified in subsection (e) of Code Section 37-11-4 may not act as witnesses.

(d) A directive shall become effective when it is delivered to the declarant's physician or other mental health care provider and shall remain in effect unless otherwise specified in the directive or until revoked by the declarant. The physician or provider shall be

authorized to act in accordance with a directive when the declarant has been found to be incapable. The physician or provider shall continue to obtain the declarant's informed consent to all mental health care decisions if the declarant is capable of providing informed consent or refusal.

(e)(1) An agent shall not have authority to make mental health care decisions unless the declarant is incapable.

(2) An agent shall not be, solely as a result of acting in that capacity, personally liable for the cost of treatment provided to the declarant.

(3) Except to the extent that a right is limited by a directive or by any federal law, an agent shall have the same right as the declarant to receive information regarding the proposed mental health care and to receive, review, and consent to disclosure of medical records relating to that care. This right of access shall not waive any evidentiary privilege.

(4) An agent shall not be subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to a psychiatric advance directive.

(f) The authority of a named agent and any alternative agent shall continue in effect so long as the directive appointing the agent is in effect or until the agent has withdrawn.

(g) A person may not be required to execute or to refrain from executing a directive as a criterion for insurance, as a condition for receiving mental or physical health care services, or as a condition of discharge from a hospital or skilled nursing facility.

37-11-4.

(a) Upon being presented with a psychiatric advance directive, a physician shall make the directive a part of the declarant's medical record. When acting under authority of a directive, a physician or other provider shall comply with it to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested, and applicable law. If the physician or other provider is unwilling at any time to comply with the directive, the physician or provider shall promptly notify the declarant and the agent and document the notification in the declarant's medical record.

(b) A physician or provider may subject a declarant to mental health treatment in a manner contrary to the declarant's wishes, as expressed in a psychiatric advance directive, only if:

(1) A court order contradicts the declarant's wishes as specified in the psychiatric advance directive; or

(2) The declarant presents a substantial risk of imminent harm to himself or herself or to others.

(c) A directive shall not limit any authority to take a person into custody or admit or retain a person in the custody of a local mental health authority pursuant to Article 3 of Chapter 11 of Title 37 or any other applicable law.

(d) A directive may be revoked in whole or in part by the declarant at any time so long as the declarant is not incapable. Such revocation shall be effective when the declarant communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the declarant's medical record.

(e) None of the following persons may serve as an agent or as witnesses to the signing of a directive:

(1) The declarant's attending physician or mental health care provider or an employee of that physician or provider;

(2) An employee of the Department of Human Resources or of a local mental health authority or any organization that contracts with a local mental health authority; provided, however, that this shall not apply to family members, friends, or other associates of the declarant if the declarant so wishes.

(f) An agent may withdraw by giving written notice to the declarant. If a declarant is incapable, the agent may withdraw by giving written notice to the attending physician or provider. The attending physician shall note the withdrawal as part of the declarant's medical record.

37-11-5.

(a) The statutory psychiatric advance directive form contained in this subsection may be used to grant an agent powers with respect to the declarant's own mental health care; but the statutory psychiatric advance directive form is not intended to be exclusive or to cover delegation of a parent's power to control the mental health care of a minor child, and no provision of this chapter shall be construed to bar use by the declarant of any other or different form of directive or power of attorney for mental health care that complies with the provisions of this chapter. If a different form of psychiatric advance directive is used, it may contain any or all of the provisions set forth or referred to in the following form. When a directive in substantially the following form is used, and notice substantially similar to that contained in the form below has been provided to the patient, it shall have the same meaning and effect as prescribed in this chapter. Substantially similar forms may include forms from other states. The statutory psychiatric advance directive may be included in or combined with any other form of advance directive governing property or other matters, and no provision of this chapter shall be construed to bar use by the declarant

165 of a durable power of attorney for health care form pursuant to Chapter 36 of Title 31,
166 either solely or in addition to the form contained in this subsection.

167 **Psychiatric Advance Directive**

168 Name: _____

169 Date: _____

170 **Mental Health Care Agent:**

171 Name: _____

172 Address: _____

173 _____

174 Day Phone Number: _____

175 Evening Phone Number: _____

176 **STATEMENT OF INTENT**

177 I, (your name) _____, being of sound mind,
178 willfully and voluntarily execute this psychiatric advance directive to assure that, during
179 periods of incapacity resulting from psychiatric illness, my choices regarding my mental
180 health care will be carried out despite my inability to make informed decisions on my own
181 behalf. In the event that a decision maker is appointed by a court to make mental health care
182 decisions for me, I intend this document to take precedence over all other means of
183 ascertaining my intent while competent.

184 By this document, I intend to create a psychiatric advance directive as authorized by state
185 law, the U.S. Constitution and the federal Patient Self-Determination Act of 1990 (P.L.
186 101-508) to indicate my wishes regarding mental health treatment. I understand that this
187 directive will become operative upon my incapacity to make my own mental health decisions
188 and shall continue in operation only during that incapacity.

189 I intend that this document should be honored whether or not my agent dies or withdraws or
190 if I have no agent appointed at the time of the execution of this document.

191 Incomplete sections in this psychiatric advance directive (i.e., not completed certain sections)
192 should not affect its validity in any way. I intend that all completed sections be followed.

193 If any part of this psychiatric advance directive is invalid or ineffective under relevant law,
194 this fact should not affect the validity or effectiveness of the other parts. It is my intention
195 that each part of this psychiatric advance directive stand alone. If some parts of this
196 document are invalid or ineffective, I desire that all other parts be followed.

197 I intend this psychiatric advance directive to take precedence over any and all living will
198 documents and/or durable power of attorney for health care documents and/or other advance
199 directives I have previously executed, to the extent that they are inconsistent with this
200 document.

201 Name: _____

202 **Instructions Included in My Psychiatric Advance Directive**

203 Put your initials in the space next to each section you have completed.

204 _____ Designation of my mental health care agent.

205 _____ Designation of alternate mental health care agent.

206 _____ Authority granted to my mental health care agent.

207 _____ When spouse is mental health care agent.

208 _____ Symptoms.

209 _____ When my plan is no longer needed.

210 _____ Clinicians.

211 _____ Medications.

212 _____ Hospitalization is not my first choice.

213 _____ Treatment facilities.

214 _____ Acceptable interventions.

215 _____ Preferred interventions.

216 _____ Help from others.

217 _____ State-wide hot line.

218 _____ Prospective Consent.

219 _____ Signature page.

220 _____ Record of psychiatric advance directive.

221 **APPOINTMENT OF AGENT FOR MENTAL HEALTH CARE**

222 If you do not wish to appoint an agent, do not complete the sections below.

223 Make sure you give your agent a copy of all sections of this document.

224 **Statement of Intent to Appoint an Agent:**

225 I, (your name), being of sound mind, authorize
226 a mental health care agent to make certain decisions on my behalf regarding my mental
227 health treatment when I do not have the capacity to do so. I intend that those decisions should
228 be made in accordance with my expressed wishes as set forth in this document. If I have not
229 expressed a choice in this document, I authorize my agent to make the decisions that my
230 agent determines are the decisions I would make if I had the capacity to do so.

231 **Designation of Mental Health Care Agent**

232 A. I hereby designate and appoint the following person as my agent to make mental health
233 care decisions for me as authorized in this document. In the event that admission for
234 psychiatric treatment is being considered, my agent must be notified/consulted before any
235 decision is finalized.

236 Name:

237 Address:

238 _____

239 Day Phone Number Evening Phone Number

240 B. Agent's Acceptance: I hereby accept the designation as agent for

241 (Your name)

242 (Your agent's signature)

243 I certify that I do not, have not, and will not provide care and treatment for this person.

244 **Designation of Alternate Mental Health Care Agent**

245 If the person named above is unavailable or unable to serve as my agent, I hereby appoint
246 and desire immediate notification of my alternate agent as follows:

247 Name:

248 Address:

249 _____

250 Day Phone Number Evening Phone Number

251 Alternate Agent's Acceptance: I hereby accept the designation as alternate agent for

252 (Your name)

253 (Your agent's signature)

254 I certify that I do not, have not, and will not provide care and treatment for this person.

255 **Authority Granted to My Mental Health Care Agent**

256 Initial if you agree with a statement; leave blank if you do not.

257 A. If I become incapable of giving consent to mental health care treatment, I
258 hereby grant to my agent full power and authority to make mental health care decisions for
259 me, including the right to consent, refuse consent, or withdraw consent to any mental health
260 care, mental health care treatment, mental health care provider, or mental health care service
261 or procedure, consistent with any instructions and/or limitations I have set forth in this
262 psychiatric advance directive. If I have not expressed a choice in this advance directive, I
263 authorize my agent to make decisions that my agent determines are the decisions I would
264 make if I had the capacity to do so.

265 B. If I am incapable of authorizing the release of my medical records, I hereby
266 grant to my agent full power and authority to request these records on my behalf.

267 C. If I choose to discharge or replace my agent, all other provisions of this
268 psychiatric advance directive shall remain in effect and shall only be revocable or changeable
269 by me.

270 **When Spouse Is Mental Health Care Agent and If There Has Been a Legal Separation,**
271 **Annulment, or Dissolution of the Marriage**

272 Initial if you agree with this statement; leave blank if you do not.

273 I desire the person I have named as my agent, who is now my spouse, to remain
274 as my agent even if we become legally separated or our marriage is dissolved.

275 **The following sections outline when my psychiatric advance directive should be**
276 **activated, when it no longer needs to be used, and details regarding my care, treatment,**
277 **and preferred interventions.**

278 **Symptoms**

279 When I exhibit the following symptoms or behaviors, this would indicate that my psychiatric
280 advance directive needs to be enacted:

281 _____

282 _____

283 _____

284 _____

285 _____

286 _____

287 _____

288 _____

289 _____

290 _____

291 _____

292 **When My Plan Is No Longer Needed**

293 When I exhibit the following behaviors, my plan no longer needs to be utilized:

294 _____

295 _____

296 _____

297 _____

298 _____

299 _____

300 _____

301 _____

302 _____

303 _____

304 _____

305 _____

306 _____

307 **Clinicians**

308 The names of my doctors, therapists, pharmacists, and service providers and their telephone
309 numbers are:

310	<u>Name</u>	<u>Phone #</u>
311		
312		
313		
314		
315		
316		
317		
318		
319		

320 I prefer treatment from the following clinicians:

321	<u>Name</u>
322	
323	
324	
325	
326	
327	

328 I prefer not to be treated by the following clinicians:

329	<u>Name</u>
330	
331	
332	
333	
334	
335	

336 **Medications**

337 (include all medications, whether for mental health care treatment or general health care

338 treatment)

339 I am currently using the following medications for:

340

341

342 _____
343 _____
344 _____
345 _____
346 _____
347 _____

348 If additional medications become necessary, I prefer to take the following medications:

349 _____
350 _____
351 _____
352 _____
353 _____

354 I cannot tolerate the following medications because:

355 _____
356 _____
357 _____
358 _____
359 _____
360 _____

361 I am allergic to the following medications:

362 _____
363 _____
364 _____
365 _____
366 _____
367 _____
368 _____
369 _____

370 **Hospitalization is not my first choice**

371 It is my intention, if possible, to stay at home or in the community with the following
372 supports:

373 _____

374

375

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Treatment Facilities

382

If it becomes necessary for me to be hospitalized, I would prefer to be treated at the

383

following facilities:

384

385

386

387

388

I do not wish to be treated at the following facilities:

389

390

391

392

393

Acceptable Interventions: *(Please place your initials in the blanks)*

394	<u>Medication in pill form</u>	<u>Yes</u>	<u>No</u>
395	<u>Liquid medication</u>	<u>Yes</u>	<u>No</u>
396	<u>Medication by injection</u>	<u>Yes</u>	<u>No</u>
397	<u>Seclusion</u>	<u>Yes</u>	<u>No</u>
398	<u>Physical restraints</u>	<u>Yes</u>	<u>No</u>
399	<u>Seclusion and physical restraints</u>	<u>Yes</u>	<u>No</u>
400	<u>Experimental treatment</u>	<u>Yes</u>	<u>No</u>
401	<u>Electroconvulsive therapy (ECT)</u>	<u>Yes</u>	<u>No</u>

402

I consent to the administration of electroconvulsive therapy with the following

403

conditions:

404

405

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421

Prospective consent

422 At a time when I am incapable of making mental health care decisions, and no agent is

423 available, I intend for this document to constitute authorization and informed consent for

424 treatment that is consistent with the preferences I have expressed in this document and is

425 medically indicated.

427

428

429

Help from Others

430 List your supporters and the ways they can help you. Be sure to write their names, phone

431 numbers, and responsibilities (mail, bills, pet, child care, etc.).

<u>Name</u>	<u>Phone Number</u>	<u>Responsibility</u>
434		
435		
436		
437		

438 _____
439 _____
440 _____
441 _____
442 _____
443 _____
444 _____
445 _____
446 _____
447 _____
448 _____
449 _____
450 _____
451 _____

452 **State-wide Hot Line**

453 I am submitting a copy of this psychiatric advance directive to the state-wide hot line, which
454 has my permission to access such directive if contacted by me or someone else on my behalf
455 to assist in informing health care providers of my preferences listed in this directive when
456 appropriate. Such hot line may also share this directive with a hospital physician if I present
457 for evaluation.

458 Name of hot line: _____

459 Date submitted to hot line: _____

460 I signed this psychiatric advance directive on (date) _____.

461 Any plan with a more recent date supersedes this one.

462 Signed _____ Date _____

463 Witness _____ Date _____

464 Witness _____ Date _____

465 (for use by the notary)

466 STATE OF _____, County of _____

467 Subscribed and sworn to or affirmed before me by the Principal,

468 _____,

469 and (names of witnesses)

470 _____ and

471 _____,

472 witnesses, as the voluntary act and deed of the Principal, this _____ day of _____.

473 _____.

474 My commission expires:

475 _____

476 _____

477 Notary Public

478 **Record of Psychiatric Advance Directive**

479 **I have given copies of my psychiatric advance directive to:**

480 **Name/Location:** _____

481 **Address:** _____

482 **Phone Numbers:** _____

483 **Name/Location:** _____

484 **Address:** _____

485 **Phone Numbers:** _____

486 **Name/Location:** _____

487 **Address:** _____

488 **Phone Numbers:** _____

489 **Name/Location:** _____

490 **Address:** _____

491 **Phone Numbers:** _____

492 **Name/Location:** _____

493 **Address:** _____

494 **Phone Numbers:** _____

495 **Name/Location:** _____

496 **Address:** _____

497 **Phone Numbers:** _____

498 **Name/Location:** _____

499 **Address:** _____

500 **Phone Numbers:** _____
501 **Name/Location:** _____
502 **Address:** _____
503 **Phone Numbers:** _____

504 (b) The statutory psychiatric advance directive form provided in subsection (a) of this
505 Code section authorizes, and any different form of mental health care agency may
506 authorize, the agent to make any and all mental health care decisions on behalf of the
507 declarant which the declarant could make if present and under no disability, incapacity, or
508 incompetency, subject to any limitations on the granted powers that appear on the face of
509 the form, to be exercised in such manner as the agent deems consistent with the intent and
510 desires of the declarant. The agent shall be under no duty to exercise granted powers or to
511 assume control of or responsibility for the declarant's mental health care; but, when granted
512 powers are exercised, the agent shall be required to use due care to act for the benefit of the
513 declarant in accordance with the terms of the psychiatric advance directive. The agent may
514 not delegate authority to make mental health care decisions. The agent may sign and
515 deliver all instruments, negotiate and enter into all agreements, and do all other acts
516 reasonably necessary to implement the exercise of the powers granted to the agent. Without
517 limiting the generality of the foregoing, the statutory psychiatric advance directive form
518 shall, and any different form of mental health care agency may, include the following
519 powers, subject to any limitations appearing on the face of the form:

520 (1) The agent is authorized to consent to and authorize or refuse, or to withhold or
521 withdraw consent to, any and all types of medical care, treatment, or procedures relating
522 to the mental health of the declarant, including any medication program;

523 (2) The agent is authorized to admit the declarant to or discharge the declarant from any
524 and all types of hospitals, institutions, homes, residential or nursing facilities, treatment
525 centers, and other health care institutions providing mental health care or treatment for
526 any type of mental condition;

527 (3) The agent is authorized to contract for any and all types of mental health care
528 services and facilities in the name of and on behalf of the declarant, and the agent shall
529 not be personally liable for any services or care contracted for on behalf of the declarant;
530 and

531 (4) At the declarant's expense and subject to reasonable rules of the mental health care
532 provider to prevent disruption of the declarant's mental health care, the agent shall have
533 the same right the declarant has to examine and copy and consent to disclosure of all the
534 declarant's medical records that the agent deems relevant to the exercise of the agent's

powers, whether the records relate to mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, hospital, skilled nursing facility, or other health care provider, notwithstanding the provisions of any statute or other rule of law to the contrary. This authority shall include all rights that the declarant has under the federal Health Insurance Portability and Accountability Act of 1996 ('HIPAA'), P.L. 104-191, and its implementing regulations regarding the use and disclosure of individually identifiable health information and other medical records.

37-11-6.

Any physician or other mental health care provider who provides treatment consistent with the preferences expressed by a patient in a psychiatric advance directive shall be deemed to have acted with appropriate authorization and informed consent for such care if the following conditions are met: (a) the patient is incapable, (b) no designated agent is available, and (c) the patient's psychiatric advance directive indicates that the patient gave prospective consent. No such physician or other mental health care provider acting in good faith shall be subject to liability for such care on the grounds that authorization or informed consent was not obtained from the patient at the time of treatment.

37-11-7.

(a) This chapter applies to all mental health care providers and other persons in relation to all mental health care agencies or directives executed on and after July 1, 2009. This chapter supersedes all other provisions of law or parts thereof existing on July 1, 2009, to the extent such other provisions are inconsistent with the terms and operation of this chapter, provided that this chapter does not affect the provisions of law governing emergency health care. If the declarant has executed a durable power of attorney for health care pursuant to Chapter 36 of Title 31, as now or hereafter amended, the declarant shall indicate within either document which is to take precedence with regard to mental health care decisions.

(b) This chapter does not in any way affect or invalidate any directive executed or any act of an agent prior to July 1, 2009, or affect any claim, right, or remedy that accrued prior to July 1, 2009.

(c) This chapter is wholly independent of the provisions of Title 53, relating to wills, trusts, and the administration of estates, and nothing in this chapter shall be construed to affect in any way the provisions of said Title 53."

568

SECTION 2.

569

All laws and parts of laws in conflict with this Act are repealed.