

The House Committee on Judiciary offers the following substitute to HB 339:

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 style="text-align:center">**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 style="text-align:center">"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.

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

25 (4) 'Hospital' means:

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

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

33 (i) Mental or emotional illness;

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

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

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

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

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

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

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

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

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

58 (9) 'Patient' means the declarant.

59 (10) 'Physician' means a person licensed to practice medicine under Article 2 of Chapter  
60 34 of Title 43.

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

63 (12) 'Psychiatric advance directive' or 'directive' means a written document governing  
64 any type of mental health care voluntarily executed by a declarant in accordance with the  
65 requirements of this chapter.

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

70 (14) 'State-wide hot line' means a state-wide, toll-free hot line available 24 hours per day,  
71 7 days per week, managed and funded by the State of Georgia for mental health and  
72 addiction crises.

73 37-11-3.

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

77 (b)(1) A competent adult may choose not to appoint a mental health agent, in which case  
78 the instructions and desires of the declarant as set forth in the directive shall be followed  
79 to the fullest extent possible by every health care provider to whom the directive is  
80 communicated, subject to the right of any such health care provider to refuse to comply  
81 with the directive as set forth in Code Section 37-11-4.

82 (2) A psychiatric advance directive may designate a competent adult to act as agent to  
83 make decisions about mental health care for the declarant. An alternative agent may also  
84 be designated to act as agent if the original designee is unable or unwilling to act at any  
85 time. An agent who has accepted the appointment in writing may make decisions about  
86 mental health care on behalf of the declarant different from or contrary to the declarant's  
87 decisions only when the declarant is incapable. An agent shall be under no duty to  
88 exercise granted powers or to assume control of or responsibility for the declarant's  
89 mental health care; provided, however, that when granted powers are exercised, the agent  
90 shall use due care to act for the benefit of the declarant in accordance with the terms of  
91 the directive. An agent shall exercise granted powers in such manner as the agent deems  
92 consistent with the intentions and desires of the declarant. If a declarant's intentions and  
93 desires are unclear, the agent shall act in the declarant's best interest considering the  
94 benefits, burdens, and risks of the declarant's circumstances and treatment options and

95 shall make such decisions consistent with the instructions and desires of the declarant, as  
96 expressed in the directive.

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

102 (d) A directive shall become effective when it is delivered to the declarant's physician or  
103 other mental health care provider and shall remain in effect unless otherwise specified in  
104 the directive or until revoked by the declarant. The physician or provider shall be  
105 authorized to act in accordance with a directive when the declarant has been found to be  
106 incapable. The physician or provider shall continue to obtain the declarant's consent to all  
107 mental health care decisions if the declarant is capable of providing consent or refusal.

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

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

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

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

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

122 37-11-4.

123 (a) Upon being presented with a psychiatric advance directive, a physician shall make the  
124 directive a part of the declarant's medical record. When acting under authority of a  
125 directive, a physician or other provider shall comply with it to the fullest extent possible,  
126 consistent with reasonable medical practice, the availability of treatments requested, and  
127 applicable law. If the physician or other provider is unwilling at any time to comply with  
128 the declarant's wishes as set forth in the directive or with the decision of the agent, if an  
129 agent has been appointed, the physician or provider shall promptly notify the declarant and  
130 the agent, if an agent has been appointed, and otherwise next of kin or legal guardian of the

131 declarant and document the notification in the declarant's medical record. The agent, if an  
132 agent has been appointed, and otherwise next of kin or legal guardian of the declarant, shall  
133 then be responsible for arranging for the declarant's transfer to another health care provider.

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

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

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

140 (3) A physician or mental health care provider determines that the declarant's wishes as  
141 expressed in the directive are contraindicated or could result in harm to the declarant.

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

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

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

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

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

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

162 37-11-5.

163 (a) The statutory psychiatric advance directive form contained in this subsection may be  
164 used to grant an agent powers with respect to the declarant's own mental health care; but  
165 the statutory psychiatric advance directive form is not intended to be exclusive or to cover  
166 delegation of a parent's power to control the mental health care of a minor child, and no

167 provision of this chapter shall be construed to bar use by the declarant of any other or  
 168 different form of directive or power of attorney for mental health care that complies with  
 169 the provisions of this chapter. If a different form of psychiatric advance directive is used,  
 170 it may contain any or all of the provisions set forth or referred to in the following form.  
 171 When a directive in substantially the following form is used, and notice substantially  
 172 similar to that contained in the form below has been provided to the patient, it shall have  
 173 the same meaning and effect as prescribed in this chapter. Substantially similar forms may  
 174 include forms from other states. The statutory psychiatric advance directive may be  
 175 included in or combined with any other form of advance directive governing property or  
 176 other matters, and no provision of this chapter shall be construed to bar use by the declarant  
 177 of a durable power of attorney for health care form pursuant to Chapter 36 of Title 31,  
 178 either solely or in addition to the form contained in this subsection.

179 **Psychiatric Advance Directive**

180 *Name:* \_\_\_\_\_

181 *Date:* \_\_\_\_\_

182 **Mental Health Care Agent:**

183 *Name:* \_\_\_\_\_

184 *Address:* \_\_\_\_\_

185 \_\_\_\_\_

186 *Day Phone Number:* \_\_\_\_\_

187 *Evening Phone Number:* \_\_\_\_\_

188 **STATEMENT OF INTENT**

189 I, (*your name*) \_\_\_\_\_, being of sound mind,  
 190 willfully and voluntarily execute this psychiatric advance directive to assure that, during  
 191 periods of incapacity resulting from psychiatric illness, my choices regarding my mental  
 192 health care will be expressed in writing despite my inability to make informed decisions on  
 193 my own behalf. In the event that a decision maker is appointed by a court to make mental  
 194 health care decisions for me, I intend this document to take precedence over all other means  
 195 of ascertaining my intent while competent.

196 By this document, I intend to create a psychiatric advance directive as authorized by state  
 197 law, the U.S. Constitution and the federal Patient Self-Determination Act of 1990 (P.L.

198 101-508) to indicate my wishes regarding mental health treatment. I understand that this  
199 directive will become operative upon my incapacity to make my own mental health decisions  
200 and shall continue in operation only during that incapacity.

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

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

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

209 I intend this psychiatric advance directive to take precedence over any and all living will  
210 documents and/or durable power of attorney for health care documents and/or other advance  
211 directives I have previously executed, to the extent that these other documents relate to my  
212 mental health care.

213 Name: \_\_\_\_\_  
214 \_\_\_\_\_

215 I have discussed this form with my treating clinician: YES \_\_\_\_\_ NO \_\_\_\_\_.

216 Treating physician's name: \_\_\_\_\_ Phone number \_\_\_\_\_  
217 \_\_\_\_\_  
218 \_\_\_\_\_

219 Optional: As the declarant's treating clinician, I declare that the declarant is competent at the  
220 time of signing this directive.

221 Treating Clinician \_\_\_\_\_ Date: \_\_\_\_\_

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

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

224 \_\_\_\_\_ Designation of my mental health care agent.

225 \_\_\_\_\_ Designation of alternate mental health care agent.

226 Authority granted to my mental health care agent.

227 When spouse is mental health care agent.

228 Symptoms.

229 When my plan is no longer needed.

230 Clinicians.

231 Medications.

232 Hospitalization is not my first choice.

233 Treatment facilities.

234 Acceptable interventions.

235 Preferred interventions.

236 Help from others.

237 State-wide hot line.

238 Prospective Consent.

239 Signature page.

240 Record of psychiatric advance directive.

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

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

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

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

245 I, (your name) \_\_\_\_\_, being of sound mind, authorize  
 246 a mental health care agent to make certain decisions on my behalf regarding my mental  
 247 health treatment when I do not have the capacity to do so. I intend that those decisions should  
 248 be made in accordance with my expressed wishes as set forth in this document. If I have not  
 249 expressed a choice in this document, I authorize my agent to make the decisions that my  
 250 agent determines are the decisions I would make if I had the capacity to do so. When making  
 251 mental health care decisions for me, my mental health care agent should consider actions that  
 252 would be consistent with past conversations we have had, my wishes as expressed herein, my  
 253 religious and other beliefs and values, and how I have handled medical and other important  
 254 issues in the past. If what I would decide is still unclear, then my mental health care agent  
 255 should make decisions for me that my mental health care agent believes are in my best  
 256 interest, considering the benefits, burdens, and risks of my current circumstances and  
 257 treatment options.

258 **Designation of Mental Health Care Agent**

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

263 Name: \_\_\_\_\_

264 Address: \_\_\_\_\_

265 \_\_\_\_\_

266 Day Phone Number \_\_\_\_\_ Evening Phone Number \_\_\_\_\_

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

268 (Your name) \_\_\_\_\_

269 (Your agent's signature) \_\_\_\_\_

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

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

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

274 Name: \_\_\_\_\_

275 Address: \_\_\_\_\_

276 \_\_\_\_\_

277 Day Phone Number \_\_\_\_\_ Evening Phone Number \_\_\_\_\_

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

279 (Your name) \_\_\_\_\_

280 (Your agent's signature) \_\_\_\_\_

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

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

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

285 A. \_\_\_\_\_ If I become incapable of giving consent to mental health care treatment, I  
 286 hereby grant to my agent full power and authority to make mental health care decisions for  
 287 me, including the right to consent, refuse consent, or withdraw consent to any mental health  
 288 care, mental health care treatment, mental health care provider, or mental health care service  
 289 or procedure, consistent with any instructions and/or limitations I have set forth in this  
 290 psychiatric advance directive. If I have not expressed a choice in this advance directive, I  
 291 authorize my agent to make decisions that my agent determines are the decisions I would  
 292 make if I had the capacity to do so. When making mental health care decisions for me, my  
 293 mental health care agent should consider actions that would be consistent with past  
 294 conversations we have had, my wishes as expressed herein, my religious and other beliefs  
 295 and values, and how I have handled medical and other important issues in the past. If what  
 296 I would decide is still unclear, then my mental health care agent should make decisions for  
 297 me that my mental health care agent believes are in my best interest, considering the benefits,  
 298 burdens, and risks of my current circumstances and treatment options.

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

301 C. \_\_\_\_\_ If I choose to discharge or replace my agent, all other provisions of this  
 302 psychiatric advance directive shall remain in effect and shall only be revocable or changeable  
 303 by me.

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

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

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

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

312 **Symptoms**

313 When I exhibit the following symptoms or behaviors, this would indicate that an evaluation  
314 is needed regarding whether or not I am incapable of making mental health care decisions  
315 and that my psychiatric advance directive needs to be enacted:

316 \_\_\_\_\_  
317 \_\_\_\_\_

318 **When My Directive Is No Longer Needed**

319 When I exhibit the following behaviors, an evaluation is needed regarding whether or not I  
320 am capable of making mental health care decisions and whether my psychiatric advance  
321 directive no longer needs to be utilized:

322 \_\_\_\_\_  
323 \_\_\_\_\_

324 **Clinicians**

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

327 Name Phone #

328 \_\_\_\_\_  
329 \_\_\_\_\_

330 I prefer treatment from the following clinicians:

331 Name

332 \_\_\_\_\_  
333 \_\_\_\_\_

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

335 Name

336 \_\_\_\_\_  
337 \_\_\_\_\_

338 **Medications**

339 (include all medications, whether for mental health care treatment or general health care  
340 treatment)

341 I am currently using the following medications for:

342 \_\_\_\_\_  
343 \_\_\_\_\_

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

345 \_\_\_\_\_  
346 \_\_\_\_\_

347 I cannot tolerate the following medications because:

348 \_\_\_\_\_  
349 \_\_\_\_\_

350 I am allergic to the following medications:

351 \_\_\_\_\_  
352 \_\_\_\_\_

353 **Hospitalization is not my first choice**

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

356 \_\_\_\_\_  
357 \_\_\_\_\_

358 **Treatment Facilities**

359 If it becomes necessary for me to be hospitalized, I would prefer to be treated at the  
360 following facilities:

361 \_\_\_\_\_  
362 \_\_\_\_\_

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

364 \_\_\_\_\_  
365 \_\_\_\_\_

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

367 Medication in pill form                      Yes \_\_\_\_\_ No \_\_\_\_\_



396 **State-wide Hot Line**

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

402 Name of hot line: \_\_\_\_\_

403 Date submitted to hot line: \_\_\_\_\_

404 I signed this psychiatric advance directive on (date) \_\_\_\_\_.

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

406 Signed \_\_\_\_\_ Date \_\_\_\_\_

407 Witness \_\_\_\_\_ Date \_\_\_\_\_

408 Witness \_\_\_\_\_ Date \_\_\_\_\_

409 (for use by the notary)

410 STATE OF \_\_\_\_\_, County of \_\_\_\_\_

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

412 \_\_\_\_\_,

413 and (names of witnesses)

414 \_\_\_\_\_ and

415 \_\_\_\_\_,

416 witnesses, as the voluntary act and deed of the Principal, this \_\_\_\_\_ day of \_\_\_\_\_.

417 \_\_\_\_\_.

418 My commission expires:

419 \_\_\_\_\_

420 \_\_\_\_\_

421 Notary Public

422 **Record of Psychiatric Advance Directive**

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

424 **Name/Location:** \_\_\_\_\_

425 **Address:** \_\_\_\_\_

426 **Phone Numbers:** \_\_\_\_\_

427 **Name/Location:** \_\_\_\_\_  
 428 **Address:** \_\_\_\_\_  
 429 **Phone Numbers:** \_\_\_\_\_

430 *You may revoke this completed form at any time. This executed form will take precedence*  
 431 *over any advance directive for health care, durable power of attorney for health care, health*  
 432 *care proxy, or living will that you have executed prior to executing this form to the extent*  
 433 *that such other documents relate to mental health care and are inconsistent with this*  
 434 *executed form.*

435 (b) An agent appointed by a declarant pursuant to this chapter is authorized to make any  
 436 and all mental health care decisions on behalf of the declarant which the declarant could  
 437 make if present and capable of making such decisions. An agent shall exercise granted  
 438 powers in such manner as the agent deems consistent with the intent and desires of the  
 439 declarant. The agent shall be under no duty to exercise granted powers or to assume  
 440 control of or responsibility for the declarant's mental health care; but, when granted powers  
 441 are exercised, the agent shall be required to use due care to act for the benefit of the  
 442 declarant in accordance with the terms of the psychiatric advance directive. The agent may  
 443 not delegate authority to make mental health care decisions. The agent may sign and  
 444 deliver all instruments, negotiate and enter into all agreements, and do all other acts  
 445 reasonably necessary to implement the exercise of the powers granted to the agent. If a  
 446 declarant's intentions and desires are unclear, the agent shall act in the declarant's best  
 447 interest considering the benefits, burdens, and risks of the declarant's circumstances and  
 448 treatment options. A mental health care agent shall not have the authority to make a  
 449 particular mental health care decision different from or contrary to the declarant's decision,  
 450 if any, if the declarant is able to understand the general nature of the mental health care  
 451 procedure or treatment being consented to or refused, as determined by the declarant's  
 452 attending physician based on such physician's good faith judgment. Without limiting the  
 453 generality of the foregoing, the statutory psychiatric advance directive form shall, and any  
 454 different form of mental health care agency may, include the following powers, subject to  
 455 any limitations appearing on the face of the form:

456 (1) The agent is authorized to consent to and authorize or refuse, or to withhold or  
 457 withdraw consent to, any and all types of medical care, treatment, or procedures relating  
 458 to the mental health of the declarant, including any medication program;  
 459 (2) The agent is authorized to admit the declarant to or discharge the declarant from any  
 460 and all types of hospitals, institutions, homes, residential or nursing facilities, treatment

461 centers, and other health care institutions providing mental health care or treatment for  
462 any type of mental condition;

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

467 (4) At the declarant's expense and subject to reasonable rules of the mental health care  
468 provider to prevent disruption of the declarant's mental health care, the agent shall have  
469 the same right the declarant has to examine and copy and consent to disclosure of all the  
470 declarant's medical records that the agent deems relevant to the exercise of the agent's  
471 powers, whether the records relate to mental health or any other medical condition and  
472 whether they are in the possession of or maintained by any physician, psychiatrist,  
473 psychologist, therapist, hospital, skilled nursing facility, or other health care provider,  
474 notwithstanding the provisions of any statute or other rule of law to the contrary. This  
475 authority shall include all rights that the declarant has under the federal Health Insurance  
476 Portability and Accountability Act of 1996 ('HIPAA'), P.L. 104-191, and its  
477 implementing regulations regarding the use and disclosure of individually identifiable  
478 health information and other medical records.

479 37-11-6.

480 (a) Each physician, mental health care provider, hospital, skilled nursing facility, and any  
481 other person who acts in good faith reliance on any direction or decision by the mental  
482 health care agent shall be protected and released to the same extent as though such person  
483 had interacted directly with the declarant as a fully capable person. Without limiting the  
484 generality of the foregoing, the following specific provisions shall also govern, protect, and  
485 validate the acts of the mental health care agent and each such physician, mental health  
486 care provider, hospital, skilled nursing facility, and any other person acting in good faith  
487 reliance on such direction or decision:

488 (1) No such physician, mental health care provider, hospital, skilled nursing facility, or  
489 person shall be subject to civil or criminal liability or discipline for unprofessional  
490 conduct solely for complying with any direction or decision by the mental health care  
491 agent, even if death or injury to the declarant ensues;

492 (2) No such physician, mental health care provider, hospital, skilled nursing facility, or  
493 person shall be subject to civil or criminal liability or discipline for unprofessional  
494 conduct solely for failure to comply with any direction or decision by the mental health  
495 care agent, as long as such physician, mental health care provider, hospital, skilled  
496 nursing facility, or person promptly informs the mental health care agent of such

497 physician's, mental health care provider's, hospital's, skilled nursing facility's, or person's  
 498 refusal or failure to comply with such direction or decision by the mental health care  
 499 agent. The mental health care agent shall then be responsible for arranging the declarant's  
 500 transfer to another health care provider, hospital or skilled nursing facility. A physician,  
 501 mental health care provider, hospital, skilled nursing facility, or person who is unwilling  
 502 to comply with the health care agent's decision shall continue to provide reasonably  
 503 necessary consultation and care in connection with the pending transfer;

504 (3) If the actions of a physician, mental health care provider, hospital, skilled nursing  
 505 facility, or person who fails to comply with any direction or decision by the mental health  
 506 care agent are substantially in accord with reasonable medical standards at the time of  
 507 reference and cooperates in the transfer of the declarant pursuant to paragraph (2) of this  
 508 subsection, the physician, mental health care provider, hospital, skilled nursing facility,  
 509 or person shall not be subject to civil or criminal liability or discipline for unprofessional  
 510 conduct for failure to comply with the psychiatric advance directive;

511 (4) No mental health care agent who, in good faith, acts with due care for the benefit of  
 512 the declarant and in accordance with the terms of a psychiatric advance directive, or who  
 513 fails to act, shall be subject to civil or criminal liability for such action or inaction; and

514 (5) If the authority granted by a psychiatric advance directive is revoked under this  
 515 chapter, a physician, mental health care provider, hospital, skilled nursing facility, or  
 516 person shall not be subject to criminal prosecution or civil liability for acting in good  
 517 faith reliance upon such psychiatric advance directive unless such physician, mental  
 518 health care provider, hospital, skilled nursing facility, or person had actual knowledge of  
 519 the revocation.

520 (d) No person who witnesses a psychiatric advance directive in good faith and in  
 521 accordance with this chapter shall be civilly or criminally liable or guilty of unprofessional  
 522 conduct for such action.

523 37-11-7.

524 (a) This chapter applies to all mental health care providers and other persons in relation  
 525 to all psychiatric advance directives executed on and after July 1, 2009. This chapter  
 526 supersedes all other provisions of law or parts thereof existing on July 1, 2009, to the extent  
 527 such other provisions are inconsistent with the terms and operation of this chapter,  
 528 provided that this chapter does not affect the provisions of law governing emergency health  
 529 care. If the declarant has executed a durable power of attorney for health care pursuant to  
 530 the former Chapter 36 of Title 31, an advance directive for health care pursuant to Chapter  
 531 32 of Title 31, a health care proxy, or living will, as now or hereafter amended, the most  
 532 recently executed advance directive will control to the extent that such other documents

533 relate to mental health care and are inconsistent with such directive. Notwithstanding the  
534 foregoing, in the event the declarant does not indicate which of these documents is to take  
535 precedence with regard to mental health decisions, the document executed last shall take  
536 precedence with regard to such decisions to the extent that such other documents relate to  
537 mental health care and are inconsistent with such document.

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

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

544 **SECTION 2.**

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