

House Bill 460

By: Representatives Gardner of the 57th, Neal of the 1st, Lindsey of the 54th, Jacobs of the 80th, Stephenson of the 92nd, and others

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 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) 'Facility' 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 facility 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 a physician and a licensed mental health
41 professional who have personally examined the patient or in the opinion of the court, a
42 patient lacks the capacity to understand the risks, benefits, and alternatives to a treatment
43 decision under consideration and is unable to give or communicate rational reasons for
44 his or her decision because of impaired thinking, impaired ability to receive and evaluate
45 information, or other cognitive disability.

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

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

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

59 (9) 'Patient' means the declarant.

60 (10) 'Physician' means a person licensed to practice medicine under Article 2 of Chapter
61 34 of Title 43.

62 (11) 'Psychiatric advance directive' or 'directive' means a written document voluntarily
63 executed by a declarant stating preferences or instructions regarding his or her mental
64 health care.

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

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

72 37-11-3.

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

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

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

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

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

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

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

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

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

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

121 37-11-4.

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

132 then be responsible for arranging for the declarant's transfer to another mental health care
133 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 shall 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; or

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 **Instructions Included in My Psychiatric Advance Directive**

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

217 _____ Designation of my mental health care agent.

218 _____ Designation of alternate mental health care agent.

219 _____ Authority granted to my mental health care agent.

220 _____ When spouse is mental health care agent.

221 _____ Symptoms.

222 _____ When my plan is no longer needed.

223 _____ Clinicians.

224 _____ Medications.

225 _____ Hospitalization is not my first choice.

226 _____ Treatment facilities.

227 _____ Acceptable interventions.

228 _____ Preferred interventions.

- 229 Help from others.
- 230 State-wide hot line.
- 231 Prospective consent.
- 232 Signature page.
- 233 Record of psychiatric advance directive.

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

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

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

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

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

251 **Designation of Mental Health Care Agent**

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

256 Name: _____

257 Address: _____

258 _____

259 Day Phone Number _____ Evening Phone Number _____

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

261 (Your name) _____

262 (Your agent's signature) _____

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

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

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

267 Name: _____

268 Address: _____

269 _____

270 Day Phone Number _____ Evening Phone Number _____

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

272 (Your name) _____

273 (Your agent's signature) _____

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

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

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

277 A. _____ If I become incapable of giving consent to mental health care treatment, I
278 hereby grant to my agent full power and authority to make mental health care decisions for
279 me, including the right to consent, refuse consent, or withdraw consent to any mental health
280 care, mental health care treatment, mental health care provider, or mental health care service
281 or procedure, consistent with any instructions and/or limitations I have set forth in this
282 psychiatric advance directive. If I have not expressed a choice in this advance directive, I
283 authorize my agent to make decisions that my agent determines are the decisions I would
284 make if I had the capacity to do so. When making mental health care decisions for me, my
285 mental health care agent should consider actions that would be consistent with past

286 conversations we have had, my wishes as expressed herein, my religious and other beliefs
 287 and values, and how I have handled medical and other important issues in the past. If what
 288 I would decide is still unclear, then my mental health care agent should make decisions for
 289 me that my mental health care agent believes are in my best interest, considering the benefits,
 290 burdens, and risks of my current circumstances and treatment options.

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

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

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

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

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

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

304 **Symptoms**

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

308 _____
 309 _____

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

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

314 _____
 315 _____

316 **Clinicians**

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

<u>Name</u>	<u>Phone #</u>
_____	_____
_____	_____

322 I prefer treatment from the following clinicians:

<u>Name</u>

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

<u>Name</u>

330 **Medications**

331 (include all medications, whether for mental health care treatment or general health care
332 treatment)

333 I am currently using the following medications for:
334 _____
335 _____

336 If additional medications become necessary, I prefer to take the following medications:
337 _____
338 _____

339 I cannot tolerate the following medications because:
340 _____
341 _____

342 I am allergic to the following medications:
343 _____
344 _____

345 **Hospitalization Is Not My First Choice**

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

348 _____
349 _____

350 **Treatment Facilities**

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

353 _____
354 _____

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

356 _____
357 _____

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

359 <u>Medication in pill form</u>	<u>Yes</u>	<u>No</u>
360 <u>Liquid medication</u>	<u>Yes</u>	<u>No</u>
361 <u>Medication by injection</u>	<u>Yes</u>	<u>No</u>
362 <u>Seclusion</u>	<u>Yes</u>	<u>No</u>
363 <u>Physical restraints</u>	<u>Yes</u>	<u>No</u>
364 <u>Seclusion and physical restraints</u>	<u>Yes</u>	<u>No</u>
365 <u>Experimental treatment</u>	<u>Yes</u>	<u>No</u>
366 <u>Electroconvulsive therapy (ECT)</u>	<u>Yes</u>	<u>No</u>

367 I consent to the administration of electroconvulsive therapy with the following
368 conditions:

369 _____
370 _____

371 **Acceptable Preferred Interventions:**

372 _____
373 _____

374 **Prospective Consent**

375 At a time when I am incapable of making mental health care decisions, and no agent is
376 available, I intend for this document to constitute authorization and consent for treatment that
377 is consistent with the preferences I have expressed in this document and is medically
378 indicated.

379 Yes _____ (Initials) No _____

380 Specific limitations on consent: _____
381 _____

382 **Help from Others**

383 List your supporters and the ways they can help you. Be sure to write their names, phone
384 numbers, and responsibilities (mail, bills, pet, child care, etc.).

<u>Name</u>	<u>Phone Number</u>	<u>Responsibility</u>
386	_____	
387	_____	

388 **State-wide Hot Line**

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

394 Name of hot line: _____

395 Date submitted to hot line: _____

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

397 Any directive with a more recent date supersedes this one.

398 Signed _____ Date _____

399 Witness _____ Date _____

400 Witness _____ Date _____

401 (for use by the notary)

402 STATE OF _____ , County of _____

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

404 _____.

405 and (names of witnesses)
 406 _____ and
 407 _____,
 408 witnesses, as the voluntary act and deed of the Principal, this _____ day of _____.
 409 _____.
 410 My commission expires:
 411 _____
 412 _____
 413 Notary Public

414 **Record of Psychiatric Advance Directive**

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

416 **Name/Location:** _____
 417 **Address:** _____
 418 **Phone Numbers:** _____
 419 **Name/Location:** _____
 420 **Address:** _____
 421 **Phone Numbers:** _____

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

427 (b) An agent appointed by a declarant pursuant to this chapter shall be authorized to make
 428 any and all mental health care decisions on behalf of the declarant which the declarant
 429 could make if present and capable of making such decisions. An agent shall exercise
 430 granted powers in such manner as the agent deems consistent with the intent and desires
 431 of the declarant. The agent shall be under no duty to exercise granted powers or to assume
 432 control of or responsibility for the declarant's mental health care; but, when granted powers
 433 are exercised, the agent shall be required to use due care to act for the benefit of the
 434 declarant in accordance with the terms of the psychiatric advance directive. The agent shall
 435 not delegate authority to make mental health care decisions. The agent may sign and

436 deliver all instruments, negotiate and enter into all agreements, and do all other acts
437 reasonably necessary to implement the exercise of the powers granted to the agent. If a
438 declarant's intentions and desires are unclear, the agent shall act in the declarant's best
439 interest considering the benefits, burdens, and risks of the declarant's circumstances and
440 treatment options. A mental health care agent shall not have the authority to make a
441 particular mental health care decision different from or contrary to the declarant's decision,
442 if any, if the declarant is able to understand the general nature of the mental health care
443 procedure or treatment being consented to or refused, as determined by the declarant's
444 attending physician based on such physician's good faith judgment. Without limiting the
445 generality of the foregoing, the statutory psychiatric advance directive form shall, and any
446 different form of mental health care agency may, include the following powers, subject to
447 any limitations appearing on the face of the form:

448 (1) The agent shall be authorized to consent to and authorize or refuse, or to withhold or
449 withdraw consent to, any and all types of medical care, treatment, or procedures relating
450 to the mental health of the declarant, including any medication program;

451 (2) The agent shall be authorized to admit the declarant to or discharge the declarant
452 from any and all types of facilities, institutions, homes, residential or nursing facilities,
453 treatment centers, and other health care institutions providing mental health care or
454 treatment for any type of mental condition;

455 (3) The agent shall be authorized to contract for any and all types of mental health care
456 services and facilities in the name of and on behalf of the declarant, and the agent shall
457 not be personally liable for any services or care contracted for on behalf of the declarant;
458 and

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

471 37-11-6.

472 (a) Each physician, mental health care provider, facility, skilled nursing facility, and any
473 other person who acts in good faith reliance on any direction or decision by the mental
474 health care agent as contained in the directive shall be protected and released to the same
475 extent as though such person had interacted directly with the declarant as a fully capable
476 person. Without limiting the generality of the foregoing, the following specific provisions
477 shall also govern, protect, and validate the acts of the mental health care agent and each
478 such physician, mental health care provider, facility, skilled nursing facility, and any other
479 person acting in good faith reliance on such direction or decision:

480 (1) No such physician, mental health care provider, facility, skilled nursing facility, or
481 person shall be subject to civil or criminal liability or discipline for unprofessional
482 conduct solely for complying with any direction or decision by the mental health care
483 agent, or contained in the directive even if death or injury to the declarant ensues;

484 (2) No such physician, mental health care provider, facility, skilled nursing facility, or
485 person shall be subject to civil or criminal liability or discipline for unprofessional
486 conduct solely for failure to comply with any direction or decision by the mental health
487 care agent or in the directive, so long as such physician, mental health care provider,
488 facility, skilled nursing facility, or person promptly informs the mental health care agent
489 of such physician's, mental health care provider's, facility's, skilled nursing facility's, or
490 person's refusal or failure to comply with such direction or decision by the mental health
491 care agent or the terms of the directive. The mental health care agent shall then be
492 responsible for arranging for the declarant's transfer to another health care provider,
493 facility, or skilled nursing facility. A physician, mental health care provider, facility,
494 skilled nursing facility, or person who is unwilling to comply with the health care agent's
495 decision or the terms of the directive shall continue to provide reasonably necessary
496 consultation and care in connection with the pending transfer;

497 (3) If the actions of a physician, mental health care provider, facility, skilled nursing
498 facility, or person who fails to comply with any direction or decision by the mental health
499 care agent or under the terms of the directive are substantially in accord with reasonable
500 medical standards at the time of reference and cooperates in the transfer of the declarant
501 pursuant to paragraph (2) of this subsection, the physician, mental health care provider,
502 facility, skilled nursing facility, or person shall not be subject to civil or criminal liability
503 or discipline for unprofessional conduct;

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

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

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

516 37-11-7.

517 (a) This chapter applies to all mental health care providers and other persons in relation
518 to all psychiatric advance directives executed on and after July 1, 2011. This chapter
519 supersedes all other provisions of law or parts thereof existing on July 1, 2011, to the extent
520 such other provisions are inconsistent with the terms and operation of this chapter,
521 provided that this chapter does not affect the provisions of law governing emergency health
522 care. If the declarant has executed a durable power of attorney for health care pursuant to
523 the former Chapter 36 of Title 31, an advance directive for health care pursuant to Chapter
524 32 of Title 31, a health care proxy, or living will, as now or hereafter amended, the most
525 recently executed advance directive will control to the extent that such other documents
526 relate to mental health care and are inconsistent with such directive. Notwithstanding the
527 foregoing, in the event the declarant does not indicate which of these documents is to take
528 precedence with regard to mental health decisions, the document executed last shall take
529 precedence with regard to such decisions to the extent that such other documents relate to
530 mental health care and are inconsistent with such document.

531 (b) This chapter does not in any way affect or invalidate any directive executed or any act
532 of an agent prior to July 1, 2011, or affect any claim, right, or remedy that accrued prior to
533 July 1, 2011.

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

537 **SECTION 2.**

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