

[Second Reprint]

**SENATE, No. 2369**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED MARCH 1, 2005

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**SYNOPSIS**

"New Jersey Advance Directives for Mental Health Care Act."

**CURRENT VERSION OF TEXT**

As amended by the Senate on June 23, 2005.

(Sponsorship Updated As Of: 7/1/2005)

1 AN ACT concerning advance directives for mental health care and  
2 supplementing Titles 26 and 30 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the "New Jersey  
8 Advance Directives for Mental Health Care Act."

9

10 2. The Legislature finds and declares that:

11 a. This State recognizes, in its law and public policy, a patient's  
12 right to make voluntary, informed choices to accept, reject, or choose  
13 among alternative courses of medical and surgical treatment, and  
14 specifically for a competent adult to plan ahead for health care  
15 decisions through the execution of an advance directive for health  
16 care, otherwise known as a living will or durable power of attorney for  
17 health care, and to have the wishes expressed therein respected,  
18 subject to certain limitations;

19 b. Advance directives for health care provide a vehicle for  
20 competent adults to operationalize their fundamental legal right to  
21 accept or refuse medical treatment in the event that they are rendered  
22 unable to make decisions and communicate with a health care provider  
23 about their treatment options because of serious illness, injury or  
24 permanent loss of mental capacity;

25 c. The issues affecting persons with mental illness and their  
26 psychiatric needs warrant enactment of a separate statute governing  
27 advance directives for these individuals, who: find their civil rights  
28 and due process protections frequently compromised; often lack the  
29 resources, societal supports and self-esteem needed to make advance  
30 directives for health care work for them; and are disadvantaged by  
31 <sup>1</sup>[ignorance on the part of] the fact that<sup>1</sup> many physicians and  
32 attorneys <sup>1</sup>are unaware<sup>1</sup> of the specific issues that typically enter into  
33 the decisions that a person with mental illness may make for himself  
34 when in crisis;

35 d. The provision by statute of advanced directives for mental health  
36 care will assure respect for the rights of patients with mental illness  
37 with respect to the provision of mental health services and their  
38 decision-making in regard thereto; and

39 e. In order to permit a person with mental illness to execute an  
40 advance directive that specifies preferences for mental health services  
41 in the event that the declarant is subsequently determined to lack

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Senate SHH committee amendments adopted May 23, 2005.

<sup>2</sup> Senate floor amendments adopted June 23, 2005.

1 decision-making capacity, the Legislature hereby enacts the "New  
2 Jersey Advance Directives for Mental Health Care Act."

3

4 3. As used in this act:

5 "Adult" means an individual 18 years of age or older.

6 "Advance directive for mental health care" or "advance directive"  
7 means a writing executed in accordance with the requirements of this  
8 act. An "advance directive" may include a proxy directive or an  
9 instruction directive, or both.

10 <sup>1</sup>["Attending mental health care professional" means a licensed  
11 psychiatrist or psychologist selected by, or assigned to, the patient  
12 who has primary responsibility for the care and treatment of the  
13 patient.]<sup>1</sup>

14 "Decision-making capacity" means a patient's ability to understand  
15 and appreciate the nature and consequences of mental health care  
16 decisions, including the benefits and risks of each, and alternatives to  
17 any proposed mental health care, and to reach an informed decision.  
18 A patient's decision-making capacity is evaluated relative to the  
19 demands of a particular mental health care decision.

20 "Declarant" means a competent adult who executes an advance  
21 directive for mental health care.

22 "Domestic partner" means a domestic partner as defined in section  
23 3 of P.L.2003, c.246 (C.26:8A-3).

24 "Instruction directive" means a writing which provides instructions  
25 and direction regarding the declarant's wishes for mental health care  
26 in the event that the declarant subsequently lacks decision-making  
27 capacity.

28 "Mental health care decision" means a decision to accept or refuse  
29 any treatment, service or procedure used to diagnose, treat or care for  
30 a patient's mental condition. "Mental health care decision" also means  
31 a decision to accept or refuse the services of a particular mental health  
32 care professional or psychiatric facility, including a decision to accept  
33 or to refuse a transfer of care.

34 "Mental health care professional" means an individual licensed <sup>1</sup>or  
35 certified<sup>1</sup> by this State to provide or administer mental health care in  
36 the ordinary course of business or practice of a profession.

37 "Mental health care representative" means the individual designated  
38 by a declarant pursuant to the proxy directive part of an advance  
39 directive for mental health care for the purpose of making mental  
40 health care decisions on the declarant's behalf, and includes an  
41 individual designated as an alternate mental health care representative  
42 who is acting as the declarant's mental health care representative in  
43 accordance with the terms and order of priority stated in an advance  
44 directive for mental health care.

45 "Patient" means an individual who is under the care of a mental  
46 health care professional.

1 "Proxy directive" means a writing which designates a mental health  
2 care representative in the event that the declarant subsequently lacks  
3 decision-making capacity.

4 "Psychiatric facility" means a State psychiatric facility listed in  
5 R.S.30:1-7, a county psychiatric hospital or the psychiatric unit of a  
6 county hospital, <sup>1</sup>[or]<sup>1</sup> a short-term care facility, special psychiatric  
7 hospital or psychiatric unit of a general hospital or other health care  
8 facility licensed by the Department of Health and Senior Services  
9 pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.)<sup>1</sup>, or a hospital or  
10 community-based mental health center or other entity licensed or  
11 funded by the Department of Human Services to provide  
12 community-based mental health services<sup>1</sup>.

13 <sup>1</sup>"Responsible mental health care professional" means a person  
14 licensed or certified by the State to provide or administer mental health  
15 care who is selected by, or assigned to, the patient and has primary  
16 responsibility for the care and treatment of the patient.<sup>1</sup>

17 "State" means a state, territory, or possession of the United States,  
18 the District of Columbia, or the Commonwealth of Puerto Rico.

19  
20 4. a. A declarant may execute<sup>1</sup>, reaffirm, modify, revoke or  
21 suspend<sup>1</sup> an advance directive for mental health care at any time<sup>2</sup>,  
22 except as provided in subsection f. of section 5 of this act<sup>2</sup>.

23 (1) The advance directive shall be signed and dated by, or at the  
24 direction of, the declarant in the presence of at least one subscribing  
25 adult witness, who shall attest that the declarant is of sound mind and  
26 free of duress and undue influence.

27 (2) The advance directive may be supplemented by a video or  
28 audio tape recording.

29 b. The following persons shall not act as a witness to the execution  
30 of an advance directive for mental health care:

31 (1) a designated mental health care representative; and

32 (2) the <sup>1</sup>[attending] responsible<sup>1</sup> mental health care professional  
33 responsible for, or directly involved with, the patient's care at the time  
34 that the advance directive is executed.

35 c. A person shall not act as a sole witness to the execution of an  
36 advance directive for mental health care if that person is:

37 (1) related to the declarant by blood, marriage or adoption, or is  
38 the declarant's domestic partner or otherwise shares the same home  
39 with the declarant; <sup>1</sup>[or]<sup>1</sup>

40 (2) entitled to any part of the declarant's estate by will or by  
41 operation of law at the time that the advance directive is executed<sup>1</sup>; or

42 (3) an operator, administrator or employee of a rooming or  
43 boarding house or a residential health care facility in which the  
44 declarant resides<sup>1</sup>.

45  
46 5. a. (1) An advance directive for mental health care shall be

1 deemed to be valid for an indefinite period of time if it does not  
2 include an expiration date, subject to a declarant's right to modify,  
3 revoke or suspend the advance directive in accordance with the  
4 provisions of this section.

5 (2) If an advance directive includes an expiration date that occurs  
6 during a period of time in which the declarant has been determined by  
7 the <sup>1</sup>[attending] responsible<sup>1</sup> mental health care professional to lack  
8 the capacity to make a particular mental health care decision, the  
9 advance directive shall remain in effect until the declarant is  
10 determined by the <sup>1</sup>[attending] responsible<sup>1</sup> mental health care  
11 professional to have regained the capacity to make a particular mental  
12 health care decision.

13 b. <sup>1</sup>[(1)]<sup>1</sup> A declarant may state in an advance directive for mental  
14 health care, including a proxy directive or an instruction directive, or  
15 both, whether the declarant wishes to be able to modify, revoke or  
16 suspend the advance directive after it has become operative pursuant  
17 to section 7 of this act<sup>1</sup> [.

18 (2) If a declarant does not ~~]; however, the failure to~~<sup>1</sup> include <sup>1</sup>such<sup>1</sup>  
19 a statement <sup>1</sup>[as described in paragraph (1) of this subsection]<sup>1</sup> in the  
20 advance directive<sup>1</sup> [, the advance directive]<sup>1</sup> shall not be <sup>1</sup>[subject to  
21 the patient's modification, revocation or suspension] construed to  
22 prevent the declarant from modifying, revoking or suspending the  
23 advance directive<sup>1</sup> under the circumstances described in <sup>1</sup>[that  
24 paragraph] this subsection<sup>1</sup>.

25 c. A declarant may reaffirm or modify an advance directive for  
26 mental health care, including a proxy directive or an instruction  
27 directive, or both, subject to the provisions of subsection b. of this  
28 section. The reaffirmation or modification shall be made in accordance  
29 with the requirements for execution of an advance directive for mental  
30 health care pursuant to section 4 of this act.

31 d. A declarant may revoke an advance directive for mental health  
32 care, including a proxy directive or an instruction directive, or both,  
33 subject to the provisions of subsection b. of this section, by the  
34 following means:

35 (1) notification, orally or in writing, to the mental health care  
36 representative or mental health care professional, or other reliable  
37 witness, or by any other act evidencing an intent to revoke the  
38 document; or

39 (2) execution of a subsequent proxy directive or instruction  
40 directive, or both, in accordance with section 4 of this act.

41 e. Designation of the declarant's spouse as mental health care  
42 representative shall be revoked upon divorce or legal separation, and  
43 designation of the declarant's domestic partner as mental health care  
44 representative shall be revoked upon termination of the declarant's  
45 domestic partnership, unless otherwise specified in the advance

1 directive.

2 f. <sup>2</sup>[An <sup>1</sup>[incompetent]incapacitated <sup>1</sup>patient] An inpatient in a  
3 psychiatric facility<sup>2</sup> may <sup>2</sup>modify, revoke or<sup>2</sup> suspend an advance  
4 directive for mental health care, including a proxy directive or an  
5 instruction directive, or both, by any of the means stated in paragraph  
6 (1) of subsection d. of this section<sup>2</sup>, unless a responsible mental health  
7 professional determines, in accordance with the provisions of section  
8 8 of this act, that the patient lacks decision-making capacity to make  
9 the decision to modify, revoke or suspend the advance directive<sup>2</sup>.  
10 <sup>2</sup>[An <sup>1</sup>[incompetent] incapacitated<sup>1</sup>]A<sup>2</sup> patient who has <sup>2</sup>modified,  
11 revoked or<sup>2</sup> suspended an advance directive may reinstate that  
12 advance directive by oral or written notification to the mental health  
13 care representative or mental health care professional of an intent to  
14 reinstate the advance directive. g. Reaffirmation, modification<sup>1</sup>[,]  
15 or<sup>1</sup> revocation <sup>1</sup>[or suspension]<sup>1</sup> of an advance directive for mental  
16 health care is effective upon communication to any person capable of  
17 transmitting the information, including the mental health care  
18 representative or mental health care professional responsible for the  
19 patient's care.

20

21 6. a. A declarant may execute a proxy directive, pursuant to the  
22 requirements of section 4 of this act, designating a competent adult to  
23 act as the declarant's mental health care representative.

24 (1) A competent adult, including, but not limited to, a declarant's  
25 spouse, domestic partner, adult child, parent or other family member,  
26 friend, religious or spiritual advisor, or other person of the declarant's  
27 choosing, may be designated as a mental health care representative.

28 (2) An operator, administrator or employee of a psychiatric facility  
29 in which the declarant is a patient or resident shall not serve as the  
30 declarant's mental health care representative unless the operator,  
31 administrator or employee is related to the declarant by blood,  
32 marriage, domestic partnership or adoption.

33 This restriction shall not apply to a mental health care professional  
34 if that individual does not serve as the patient's <sup>1</sup>[attending]  
35 responsible<sup>1</sup> mental health care professional or other provider of  
36 mental health care services to the patient and the patient's mental  
37 health care representative at the same time.

38 (3) A declarant may designate one or more alternate mental health  
39 care representatives, listed in order of priority. In the event that the  
40 primary designee is unavailable, unable or unwilling to serve as mental  
41 health care representative, or is disqualified from such service pursuant  
42 to this section or any other law, the next designated alternate shall  
43 serve as mental health care representative. In the event that the  
44 primary designee subsequently becomes available and able to serve as  
45 mental health care representative, the primary designee may, insofar  
46 as then practicable, serve as mental health care representative.

1 (4) A declarant may direct the mental health care representative to  
2 consult with specified individuals, including alternate designees, family  
3 members and friends, in the course of the decision-making process.

4 (5) A declarant shall state the limitations, if any, to be placed upon  
5 the authority of the mental health care representative.

6 (6) If a declarant explicitly authorizes the mental health care  
7 representative to consent to the declarant's admission to a psychiatric  
8 facility, the declarant shall separately initial each paragraph in which  
9 that authorization is granted at the time that the proxy directive is  
10 signed and witnessed.

11 b. A declarant may execute an instruction directive, pursuant to the  
12 requirements of section 4 of this act, which specifies preferences for  
13 mental health services in the event that the declarant is subsequently  
14 determined to lack decision-making capacity.

15 (1) The instruction directive may include: a statement of the  
16 declarant's general mental health care philosophy and objectives; the  
17 declarant's specific wishes regarding the provision, withholding or  
18 withdrawal of any form of mental health care; or both.

19 (2) The declarant's specific wishes regarding the provision,  
20 withholding or withdrawal of any form of mental health care may  
21 include:

22 (a) the identification of mental health care professionals and  
23 programs and psychiatric facilities that the declarant would prefer to  
24 provide mental health services;

25 (b) consent to admission to a psychiatric facility for up to a  
26 specified number of days;

27 (c) a refusal to accept specific types of mental health treatment,  
28 including medications;

29 (d) a statement of medications preferred by the declarant for  
30 mental health treatment;

31 (e) a statement of the preferred means of crisis intervention or other  
32 preferences for mental health treatment; and

33 (f) additional instructions or information concerning mental health  
34 care.

35 (3) An instruction directive may, but need not, be executed  
36 contemporaneously with, or be attached to, a proxy directive.

37  
38 7. a. An advance directive for mental health care shall become  
39 operative:

40 (1) when it is transmitted to the <sup>1</sup>[attending] responsible<sup>1</sup> mental  
41 health care professional or the psychiatric facility; and it is determined  
42 pursuant to section 8 of this act that the patient lacks capacity to make  
43 a particular mental health care decision; or

44 (2) at an earlier date if stipulated by the declarant in the advance  
45 directive.

46 b. Treatment decisions pursuant to an advance directive for mental

1 health care shall not be made and implemented until there has been a  
2 reasonable opportunity to establish, and where appropriate confirm, a  
3 reliable diagnosis and prognosis for the patient.

4  
5 8. a. The <sup>1</sup>[attending] responsible<sup>1</sup> mental health care professional  
6 shall determine whether the patient lacks the capacity to make a  
7 particular mental health care decision. The determination shall: be  
8 stated in writing; include the <sup>1</sup>[attending] responsible<sup>1</sup> mental health  
9 care professional's opinion concerning the nature, cause, extent and  
10 probable duration of the patient's incapacity; and be made a part of the  
11 patient's medical records.

12 b. <sup>1</sup>[(1)]<sup>1</sup> The <sup>1</sup>[attending] responsible<sup>1</sup> mental health care  
13 professional's determination of a lack of decision-making capacity shall  
14 be confirmed by one or more mental health care professionals. The  
15 opinion of the confirming mental health care professional shall be  
16 stated in writing and made a part of the patient's medical records in the  
17 same manner as that of the <sup>1</sup>[attending] responsible<sup>1</sup> mental health  
18 care professional.

19 <sup>1</sup>[(2)] Notwithstanding the provisions of paragraph (1) of this  
20 subsection to the contrary, confirmation of a lack of decision-making  
21 capacity is not required when the patient's lack of decision-making  
22 capacity is clearly apparent, and the attending mental health care  
23 professional and the mental health care representative agree that  
24 confirmation is unnecessary.]<sup>1</sup>

25 c. A mental health care professional designated by the patient's  
26 advance directive as a mental health care representative shall not make  
27 the determination of a lack of decision-making capacity.

28 d. The <sup>1</sup>[attending] responsible<sup>1</sup> mental health care professional  
29 shall inform the patient, if the patient has any ability to comprehend  
30 that he has been determined to lack decision-making capacity, and the  
31 mental health care representative that:

32 (1) the patient has been determined to lack decision-making  
33 capacity to make a particular mental health care decision;

34 (2) each has the right to contest this determination; and

35 (3) each may have recourse to the dispute resolution process  
36 established by the psychiatric facility pursuant to section 14 of this act.

37 Notice to the patient and the mental health care representative shall  
38 be documented in the patient's medical records.

39 e. A determination of lack of decision-making capacity under this  
40 act shall be solely for the purpose of implementing an advance  
41 directive for mental health care in accordance with the provisions of  
42 this act, and shall not be construed as a determination of a patient's  
43 incapacity or incompetence for any other purpose.

44 f. For the purposes of this section, a determination that a patient  
45 lacks decision-making capacity shall be based upon, but need not be  
46 limited to, an evaluation of the patient's ability to understand and



1 appreciate the nature and consequences of a particular mental health  
2 care decision, including the benefits and risks of, and alternatives to,  
3 the proposed <sup>1</sup>mental health<sup>1</sup> care <sup>1</sup>[or treatment]<sup>1</sup>, and to reach an  
4 informed decision.

5 <sup>2</sup>g. For the purposes of this section, "mental health care decision"  
6 includes a decision to modify, revoke or suspend an advance directive  
7 for mental health care as provided in subsection f. of section 5 of this  
8 act.<sup>2</sup>

9  
10 9. a. If it has been determined that the patient lacks decision-  
11 making capacity, a mental health care representative shall have  
12 authority to make <sup>1</sup>mental<sup>1</sup> health care decisions on behalf of the  
13 patient.

14 (1) The mental health care representative shall act in good faith and  
15 within the bounds of the authority granted by the advance directive for  
16 mental health care and by this act.

17 (2) The mental health care representative may consent to the  
18 patient's admission to a psychiatric facility only as authorized pursuant  
19 to paragraph (6) of subsection a. of section 6 of this act.

20 b. If a different individual has been appointed as the patient's legal  
21 guardian, the mental health care representative shall retain legal  
22 authority to make mental health care decisions on the patient's behalf,  
23 unless the terms of the legal guardian's court appointment or other  
24 court decree provide otherwise.

25 c. The conferral of legal authority on the mental health care  
26 representative shall not be construed to impose liability upon that  
27 person for any portion of the patient's health care costs.

28 d. An individual designated as a mental health care representative  
29 or as an alternate mental health care representative may decline to  
30 serve in that capacity.

31 e. The mental health care representative shall exercise the patient's  
32 right to be informed of the patient's mental health condition, prognosis  
33 and treatment options, and to give informed consent to, or refusal of,  
34 health care.

35 f. In the exercise of these rights and responsibilities, the mental  
36 health care representative shall seek to make the mental health care  
37 decision that the patient would have made if the patient possessed  
38 decision-making capacity under the circumstances, or, when the  
39 patient's wishes cannot adequately be determined, shall make a mental  
40 health care decision in the best interests of the patient.

41 <sup>1</sup>g. Departure from the decisions of a mental health care  
42 representative shall be permitted only if the responsible mental health  
43 care professional determines that compliance with those decisions  
44 would:

45 (1) violate the accepted standard of mental health care or treatment  
46 under the circumstances of the patient's mental health condition;

1       (2) require the use of a form of care or treatment that is not  
2 available to the mental health care professional responsible for the  
3 provision of mental health services to the patient;

4       (3) violate a court order or provision of statutory law; or

5       (4) endanger the life or health of the patient or another person.<sup>1</sup>

6  
7       10. In addition to any rights and responsibilities recognized or  
8 imposed by or pursuant to this act, or by any other law, a mental  
9 health care professional shall have the following responsibilities:

10       a. The <sup>1</sup>[attending] responsible<sup>1</sup> mental health care professional  
11 shall make an affirmative inquiry of the patient, the patient's family or  
12 others, as appropriate under the circumstances, concerning the  
13 existence of an advance directive for mental health care. The  
14 <sup>1</sup>[attending] responsible<sup>1</sup> mental health care professional shall note in  
15 the patient's medical records whether or not an advance directive  
16 exists, and the name of the patient's mental health care representative,  
17 if any, and shall attach a copy of the advance directive to the patient's  
18 medical records. The <sup>1</sup>[attending] responsible<sup>1</sup> mental health care  
19 professional shall document in the same manner the reaffirmation,  
20 modification, revocation or suspension of an advance directive, if he  
21 has knowledge of such action.

22       b. In the event of a transfer of a patient's care:

23       (1) The <sup>1</sup>[attending] responsible<sup>1</sup> mental health care professional  
24 shall assure the timely transfer of the patient's medical records,  
25 including a copy of the patient's advance directive for mental health  
26 care; and

27       (2) A mental health care professional other than the <sup>1</sup>[attending]  
28 responsible<sup>1</sup> mental health care professional, who is responsible for the  
29 patient's care, shall cooperate in effecting an appropriate, respectful  
30 and timely transfer of care, and to assure that the patient is not  
31 abandoned or treated disrespectfully.

32  
33       11. a. (1) The <sup>1</sup>[attending] responsible<sup>1</sup> mental health care  
34 professional, <sup>1</sup>the patient to the extent possible, the<sup>1</sup> mental health  
35 care representative, and, when appropriate, any additional mental  
36 health care professional responsible for the patient's care, shall discuss  
37 the nature and consequences of the patient's mental health condition,  
38 and the risks, benefits and burdens of the proposed mental health care  
39 and its alternatives. Except as provided in paragraph (2) of subsection  
40 b. of this section, the <sup>1</sup>[attending] responsible<sup>1</sup> mental health care  
41 professional shall obtain informed consent for, or refusal of, health  
42 care from the mental health care representative.

43       (2) The decision-making process shall allow, as appropriate under  
44 the circumstances, adequate time for the mental health care  
45 representative to understand and deliberate about all relevant  
46 information before a treatment decision is implemented.

1       b. (1) <sup>1</sup>[Following a determination that a patient lacks decision-  
2 making capacity, the mental health care representative and the  
3 attending mental health care professional shall, to a reasonable extent,  
4 discuss the treatment options with the patient, and seek to involve the  
5 patient as a participant in the decision-making process.]<sup>1</sup> The mental  
6 health care representative and the <sup>1</sup>[attending] responsible<sup>1</sup> mental  
7 health care professional shall seek to promote the patient's capacity for  
8 effective participation <sup>1</sup>[and shall take the patient's expressed wishes  
9 into account in the decision-making process]<sup>1</sup>.

10       (2) Once decision-making authority has been conferred upon a  
11 mental health care representative pursuant to an advance directive for  
12 mental health care, if the patient is subsequently found to possess  
13 adequate decision-making capacity with respect to a particular mental  
14 health care decision, the patient shall <sup>1</sup>[retain] have<sup>1</sup> legal authority  
15 to make that decision. In those circumstances, the mental health care  
16 representative may continue to participate in the decision-making  
17 process in an advisory capacity, unless the patient objects.

18       c. If a mental health care representative is authorized to consent to  
19 the patient's admission to a psychiatric facility pursuant to paragraph  
20 (6) of subsection a. of section 6 of this act and the <sup>1</sup>[attending]  
21 responsible<sup>1</sup> mental health care professional has obtained informed  
22 consent for admission from the mental health care representative, the  
23 <sup>1</sup>[attending] responsible<sup>1</sup> mental health professional may admit the  
24 patient based upon the <sup>1</sup>[attending] responsible<sup>1</sup> mental health  
25 professional's:

26       (1) thorough investigation of the patient's psychiatric and  
27 psychological history, diagnosis and need for care or treatment, and  
28 expressed wishes;

29       (2) written determination that the patient is in need of an inpatient  
30 evaluation or would benefit from the care or treatment of a mental,  
31 emotional or other personality disorder in an inpatient setting, and that  
32 the evaluation, care or treatment cannot be accomplished in a less  
33 restrictive setting; and

34       (3) documentation in the patient's medical records of the  
35 <sup>1</sup>[attending] responsible<sup>1</sup> mental health professional's findings and  
36 recommendations with regard to the patient's care or treatment.

37       d. In acting to implement a patient's wishes pursuant to an advance  
38 directive for mental health care, the mental health care representative  
39 shall give priority to the patient's instruction directive, and may also  
40 consider, as appropriate and necessary, the following forms of  
41 evidence of the patient's wishes:

42       (1) the patient's contemporaneous expressions, including nonverbal  
43 expressions;

44       (2) other reliable sources of information, including the mental  
45 health care representative's personal knowledge of the patient's values,

1 preferences and goals; and

2 (3) reliable oral or written statements previously made by the  
3 patient, including, but not limited to, statements made to other  
4 persons.

5 e. If the instruction directive, in conjunction with other evidence  
6 of the patient's wishes, does not provide, in the exercise of reasonable  
7 judgment, clear direction as applied to the patient's mental health  
8 condition and the treatment alternatives, the mental health care  
9 representative shall exercise reasonable discretion, in good faith, to  
10 effectuate the provisions, intent, and spirit of the instruction directive  
11 and other evidence of the patient's wishes.

12 f. Subject to the provisions of this act, and unless otherwise stated  
13 in the advance directive, if the patient's wishes cannot be adequately  
14 determined, then the mental health care representative shall make a  
15 mental health care decision in the patient's best interests.

16

17 12. a. If the patient has executed an instruction directive but has  
18 not designated a mental health care representative, or if neither the  
19 designated mental health care representative or any alternate designee  
20 is able or available to serve, the instruction directive shall be legally  
21 operative. If the instruction directive provides clear and unambiguous  
22 guidance under the circumstances, it shall be honored in accordance  
23 with its specific terms by a legally appointed guardian, if any, family  
24 member, mental health care professional and psychiatric facility  
25 involved with the patient's mental health care, and any other person  
26 acting on the patient's behalf, except as provided in subsection c. of  
27 this section.

28 b. If the instruction directive is, in the exercise of reasonable  
29 judgment, not specific to the patient's mental health condition and the  
30 treatment alternatives, the <sup>1</sup>[attending] responsible <sup>1</sup>mental health  
31 care professional, in consultation with a legally appointed guardian, if  
32 any, family member, or other person acting on the patient's behalf,  
33 shall exercise reasonable judgment to effectuate the wishes of the  
34 patient, giving full weight to the terms, intent and spirit of the  
35 instruction directive.

36 c. Departure from the specific provisions of the instruction  
37 directive shall be permitted only if the <sup>1</sup>[attending] responsible<sup>1</sup>  
38 mental health care professional determines that compliance with those  
39 terms or provisions would:

40 (1) violate the accepted standard of mental health care or treatment  
41 under the circumstances of the patient's mental health condition;

42 (2) require the use of a form of care or treatment that is not  
43 available to the mental health care <sup>1</sup>[professionals] professional<sup>1</sup>  
44 responsible for the provision of mental health services to the patient;

45 (3) violate a court order or provision of statutory law; or

46 (4) endanger the life or health of the patient or another person.

1 13. In addition to any rights and responsibilities recognized or  
2 imposed by or pursuant to this act, or any other law, a psychiatric  
3 facility shall have the following responsibilities:

4 a. A psychiatric facility shall adopt such policies and practices as  
5 are necessary to provide for routine inquiry, at the time of admission,  
6 and at such other times as are appropriate under the circumstances,  
7 concerning the existence and location of an advance directive for  
8 mental health care.

9 b. A psychiatric facility shall adopt such policies and practices as  
10 are necessary to provide appropriate informational materials  
11 concerning advance directives for mental health care to all interested  
12 patients and their families and mental health care representatives, and  
13 to assist patients interested in discussing and executing an advance  
14 directive for mental health care.

15 c. In situations in which a transfer of care is necessary, including  
16 a transfer for the purpose of effectuating a patient's wishes pursuant  
17 to an advance directive for mental health care, a psychiatric facility  
18 shall, in consultation with the <sup>1</sup>[attending] responsible<sup>1</sup> mental health  
19 care professional, take all reasonable steps to effect the appropriate,  
20 respectful and timely transfer of the patient to the care of an  
21 alternative mental health care professional or psychiatric facility, as  
22 necessary, and shall assure that the patient is not abandoned or treated  
23 disrespectfully. In those circumstances, a psychiatric facility shall  
24 assure the timely transfer of the patient's medical records, including a  
25 copy of the patient's advance directive for mental health care.

26 d. A psychiatric facility shall establish procedures and practices for  
27 dispute resolution in accordance with section 14 of this act.

28 e. A psychiatric facility shall adopt such policies and practices as  
29 are necessary to: inform mental health care professionals of their  
30 rights and responsibilities under this act; assure that those rights and  
31 responsibilities are understood; and provide a forum for discussion and  
32 consultation regarding the requirements of this act.

33  
34 14. a. In the event of disagreement among the patient, mental  
35 health care representative and <sup>1</sup>[attending] responsible<sup>1</sup> mental health  
36 care professional concerning the patient's decision-making capacity or  
37 the appropriate interpretation and application of the provisions of an  
38 advance directive for mental health care to the patient's course of  
39 treatment, the parties may seek to resolve the disagreement by means  
40 of procedures and practices established by the psychiatric facility,  
41 including but not limited to, consultation with an institutional ethics  
42 committee, or with a person designated by the psychiatric facility for  
43 this purpose, or may seek resolution by a court of competent  
44 jurisdiction.

45 b. A mental health care professional involved in the patient's care,  
46 other than the <sup>1</sup>[attending] responsible<sup>1</sup> mental health care

1 professional, or an administrator of a psychiatric facility may also  
2 invoke the dispute resolution process established by the psychiatric  
3 facility to seek to resolve a disagreement concerning the patient's  
4 decision-making capacity or the appropriate interpretation and  
5 application of the provisions of an advance directive for mental health  
6 care.

7

8 15. The provisions of this act shall not be construed to supersede  
9 any court order relating to, or the provisions of any other statute  
10 governing, commitment or admission to a psychiatric facility or the  
11 provision of mental health care <sup>1</sup>[treatment]<sup>1</sup>, including, but not  
12 limited to, P.L.1987, c.116 (C.30:4-27.1 et seq.). Any conflict  
13 between a court order or the provisions of another statute and the  
14 provisions of an advance directive for mental health care, which  
15 renders those provisions of the advance directive invalid, shall not be  
16 deemed to invalidate any other provisions of the advance directive that  
17 do not conflict with the court order or statute.

18

19 16. In accordance with the "Administrative Procedure Act,"  
20 P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Health and  
21 Senior Services, in consultation with the Commissioner of Human  
22 Services, shall adopt rules and regulations, with respect to psychiatric  
23 facilities licensed by the Department of Health and Senior Services,  
24 to:

25 a. provide for the annual reporting by those psychiatric facilities to  
26 the Department of Health and Senior Services, and the gathering of  
27 such additional data, as is reasonably necessary to oversee and  
28 evaluate the implementation of this act; except that the commissioner  
29 shall seek to minimize the burdens of record-keeping imposed by the  
30 rules and regulations and ensure the appropriate confidentiality of  
31 patient records; and

32 b. require those psychiatric facilities to adopt policies and practices  
33 designed to:

34 (1) make routine inquiry, at the time of admission and at such other  
35 times as are appropriate under the circumstances, concerning the  
36 existence and location of an advance directive for mental health care;

37 (2) provide appropriate informational materials concerning advance  
38 directives for mental health care<sup>1</sup>, including information about the  
39 registry of advance directives for mental health care established or  
40 designated pursuant to section 17 of this act,<sup>1</sup> to all interested patients  
41 and their families and mental health care representatives, and to assist  
42 patients interested in discussing and executing an advance directive for  
43 mental health care<sup>1</sup>, as well as to encourage declarants to periodically  
44 review their advance directives for mental health care as needed<sup>1</sup>;

45 (3) inform mental health care professionals of their rights and  
46 responsibilities under this act, to assure that the rights and  
47 responsibilities are understood, and to provide a forum for discussion

1 and consultation regarding the requirements of this act; and  
2 (4) otherwise comply with the provisions of this act.

3  
4 17. In accordance with the "Administrative Procedure Act,"  
5 P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Human  
6 Services, in consultation with the Commissioner of Health and Senior  
7 Services, shall<sup>1</sup>:

8 a.<sup>1</sup> adopt rules and regulations, with respect to psychiatric facilities  
9 operated by the Department of Human Services, to:

10 <sup>1</sup>[a.] (1)<sup>1</sup> provide for the annual reporting by those psychiatric  
11 facilities to the Department of Human Services, and the gathering of  
12 such additional data, and the sharing of such reported information and  
13 additional data by the Department of Human Services with the  
14 Department of Health and Senior Services, as is reasonably necessary  
15 to oversee and evaluate the implementation of P.L. , c. (C. )  
16 (pending before the Legislature as this bill); except that the  
17 commissioner shall seek to minimize the burdens of record-keeping  
18 imposed by the rules and regulations and ensure the appropriate  
19 confidentiality of patient records; and

20 <sup>1</sup>[b.] (2)<sup>1</sup> require those psychiatric facilities to adopt policies and  
21 practices designed to:

22 <sup>1</sup>[(1)] (a)<sup>1</sup> make routine inquiry, at the time of admission and at  
23 such other times as are appropriate under the circumstances,  
24 concerning the existence and location of an advance directive for  
25 mental health care;

26 <sup>1</sup>[(2)] (b)<sup>1</sup> provide appropriate informational materials concerning  
27 advance directives for mental health care<sup>1</sup>, including information about  
28 the registry of advance directives for mental health care established or  
29 designated pursuant to subsection b. of this section.<sup>1</sup> to all interested  
30 patients and their families and mental health care representatives, and  
31 to assist patients interested in discussing and executing an advance  
32 directive for mental health care<sup>1</sup>, as well as to encourage declarants to  
33 periodically review their advance directives for mental health care as  
34 needed<sup>1</sup>;

35 <sup>1</sup>[(3)] (c)<sup>1</sup> inform mental health care professionals of their rights  
36 and responsibilities under P.L. , c. (C. )(pending before the  
37 Legislature as this bill), to assure that the rights and responsibilities are  
38 understood, and to provide a forum for discussion and consultation  
39 regarding the requirements of P.L. , c. (C. )(pending before the  
40 Legislature as this bill); and

41 <sup>1</sup>[(4)] (d)<sup>1</sup> otherwise comply with the provisions of P.L. , c.  
42 (C. ) (pending before the Legislature as this bill).

43 b. adopt rules and regulations to establish or designate a registry  
44 of advance directives for mental health care, which rules and  
45 regulations include procedures for accessing the registry<sup>1</sup>.

46  
47 18. The Department of Health and Senior Services and the

1 Department of Human Services shall jointly evaluate the  
2 implementation of this act and report to the Governor and the  
3 Legislature, including recommendations for any changes deemed  
4 necessary, within five years after the effective date of this act.

5  
6 19. a. A mental health care representative shall not be subject to  
7 criminal or civil liability for any actions performed in good faith and in  
8 accordance with the provisions of this act to carry out the terms of an  
9 advance directive for mental health care.

10 b. A mental health care professional shall not be subject to criminal  
11 or civil liability, or to discipline by the psychiatric facility or the  
12 respective State licensing board for professional misconduct, for any  
13 actions performed to carry out the terms of an advance directive for  
14 mental health care in good faith and in accordance with: the  
15 provisions of this act; any rules and regulations adopted by the  
16 Commissioner of Health and Senior Services or the Commissioner of  
17 Human Services pursuant to this act; and accepted professional  
18 standards.

19 c. A psychiatric facility shall not be subject to criminal or civil  
20 liability for any actions performed in good faith and in accordance with  
21 the provisions of this act to carry out the terms of an advance directive  
22 for mental health care.

23  
24 20. Nothing in this act shall be construed to impair the legal force  
25 and effect of an advance directive for health care executed pursuant to  
26 P.L.1991, c.201 (C.26:2H-53 et seq.) either prior to or after the  
27 enactment of this act.

28  
29 21. The absence of an advance directive for mental health care shall  
30 create no presumption with respect to a patient's wishes regarding the  
31 provision, withholding or withdrawing of any form of health care. The  
32 provisions of this act shall not apply to persons who have not executed  
33 an advance directive for mental health care.

34  
35 22. The execution of an advance directive for mental health care  
36 pursuant to this act shall not in any manner affect, impair or modify the  
37 terms of, or rights or obligations created under, any existing policy of  
38 health insurance, life insurance or annuity, or governmental benefits  
39 program. No health care provider, and no health benefits plan, insurer  
40 or governmental authority, shall exclude from health care services or  
41 deny coverage to any individual because that individual has executed  
42 or has not executed an advance directive for mental health care. The  
43 execution, or non-execution, of an advance directive for mental health  
44 care shall not be made a condition of coverage under any policy of  
45 health insurance, life insurance or annuity, or governmental benefits  
46 program.



1       23. An advance directive for mental health care executed under the  
2 laws of another state in compliance with the laws of that state or the  
3 State of New Jersey is validly executed for the purposes of this act.  
4 An advance directive for mental health care executed in a foreign  
5 country in compliance with the laws of that country or the State of  
6 New Jersey, and not contrary to the public policy of this State, is  
7 validly executed for the purposes of this act.

8  
9       24. a. (1) To the extent that any of the provisions of this act are  
10 inconsistent with P.L.2000, c.109 (C.46:2B-8.1 et seq.) concerning the  
11 designation of a mental health care representative, the provisions of  
12 this act shall have priority over those of P.L.2000, c.109.

13       (2) Durable powers of attorney for health care executed pursuant  
14 to P.L.2000, c.109 prior to the effective date of this act shall have the  
15 same legal force and effect as if they had been executed in accordance  
16 with the provisions of this act.

17       b. Nothing in this act shall be construed to impair the rights of  
18 emancipated minors under existing law.

19  
20       25. a. A mental health care professional who intentionally fails to  
21 act in accordance with the requirements of this act is subject to  
22 discipline for professional misconduct pursuant to section 8 of  
23 P.L.1978, c.73 (C.45:1-21).

24       b. A psychiatric facility that intentionally fails to act in accordance  
25 with the requirements of this act shall be subject to a fine of not more  
26 than \$1,000 for each offense. For the purposes of this subsection,  
27 each violation shall constitute a separate offense. Penalties for  
28 violations of this act shall be recovered in a summary civil proceeding,  
29 brought in the name of the State in a court of competent jurisdiction  
30 pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274  
31 (C.2A:58-10 et seq.).

32       c. It shall be a crime of the fourth degree for a person to:

33       (1) willfully conceal, cancel, deface, obliterate or withhold personal  
34 knowledge of an advance directive for mental health care, or a  
35 modification, revocation or suspension thereof, without the declarant's  
36 consent;

37       (2) falsify or forge an advance directive for mental health care of  
38 another person, or a modification, revocation or suspension thereof;

39       (3) coerce or fraudulently induce the execution of an advance  
40 directive for mental health care, or a modification, revocation or  
41 suspension, thereof; or

42       (4) require or prohibit the execution of an advance directive for  
43 mental health care, or a modification, revocation or suspension  
44 thereof, as a condition of coverage under any policy of health  
45 insurance, life insurance or annuity, or governmental benefits program,  
46 or as a condition of the provision of health care.

1       d. The sanctions provided in this section shall not be construed to  
2 repeal any sanctions applicable under other law.

3

4       26. This act shall take effect on the 180th day after enactment,  
5 except that the Commissioners of Health and Senior Services and  
6 Human Services may take such anticipatory administrative action in  
7 advance as shall be necessary for the implementation of the act.