

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 757

Children and Human Resources Committee Substitute Adopted 4/30/97

Short Title: Advance Instr./Mental Health.

(Public)

Sponsors:

Referred to:

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 122C of the General Statutes is amended by designating G.S. 122C-51 through G.S. 122C-70 as "Part 1".

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

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

**"§ 122C-71. Purpose.**

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

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

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

5 **"§ 122C-72. Definitions.**

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

- 8 (1) 'Advance instruction' or 'advance instruction for mental health treatment'  
9 means a written instrument, signed by two qualified witnesses, that  
10 makes a declaration of instructions, that also provides information and  
11 preferences regarding mental health treatment, and that may appoint an  
12 attorney-in-fact.
- 13 (2) 'Attending physician' means the physician who has primary  
14 responsibility for the care and treatment of the principal.
- 15 (3) 'Attorney-in-fact' means an adult validly appointed under G.S. 122C-75  
16 to make mental health treatment decisions for a principal under an  
17 advance instruction for mental health treatment and also means an  
18 alternative attorney-in-fact.
- 19 (4) 'Incapable' means that, in the opinion of a physician or eligible  
20 psychologist, the person currently lacks the capacity to make and  
21 communicate mental health treatment decisions. As used in this  
22 subdivision, the term 'eligible psychologist' has the meaning given the  
23 term in G.S. 122C-3(13b).
- 24 (5) 'Mental health treatment' means the process of providing for the  
25 physical, emotional, psychological, and social needs of the principal.  
26 'Mental health treatment' includes, but is not limited to,  
27 electroconvulsive treatment (ECT), commonly referred to as 'shock  
28 treatment', treatment of mental illness with psychotropic medication,  
29 and admission to and retention in a facility for care or treatment of  
30 mental illness.
- 31 (6) 'Principal' means the person making the advance instruction.
- 32 (7) 'Qualified witness' means a witness who affirms that the principal is  
33 personally known to the witness, that the principal signed or  
34 acknowledged the principal's signature on the advance instruction in the  
35 presence of the witness, that the witness believes the principal to be of  
36 sound mind and not to be under duress, fraud, or undue influence, and  
37 that the witness is not:
- 38 a. The attending physician or mental health service provider or a  
39 relative of the physician or provider; or
- 40 b. An owner, operator, or relative of an owner or operator of a  
41 health care facility in which the principal is a patient or resident.

42 **"§ 122C-73. Scope, use, and authority of advance instruction for mental health**  
43 **treatment.**

1       (a) Any adult of sound mind may make an advance instruction regarding mental  
2 health treatment. The advance instruction may include consent to or refusal of mental  
3 health treatment. The advance instruction may also appoint an attorney-in-fact.

4       (b) An advance instruction may include, but is not limited to, the names and  
5 telephone numbers of individuals to be contacted in case of mental health crisis,  
6 situations that may cause the principal to experience a mental health crisis, responses that  
7 may assist the principal to remain in the principal's home during a mental health crisis,  
8 the types of assistance that may help stabilize the principal if it becomes necessary to  
9 enter a facility, and medications that the principal is taking or has taken in the past and  
10 the effects of those medications.

11       (c) A person shall not be required to execute or to refrain from executing an  
12 advance instruction as a condition for insurance coverage, as a condition for receiving  
13 mental or physical health services, as a condition for receiving privileges while in a  
14 facility, or as a condition of discharge from a facility.

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

20       (e) If, following the execution of an advance instruction for mental health  
21 treatment, a court of competent jurisdiction appoints a guardian of the person of the  
22 principal, or a general guardian with powers over the person of the principal, the advance  
23 instruction for mental health treatment shall remain in effect and shall be superior to the  
24 powers and duties of the guardian of the person with respect to mental health treatment  
25 covered under the advance instruction.

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

29 **"§ 122C-74. Effectiveness and duration; revocation.**

30       (a) A validly executed advance instruction becomes effective when it is delivered  
31 to the principal's physician or other mental health treatment provider and remains valid  
32 until revoked or expired. The physician or provider shall act in accordance with an  
33 advance instruction when the principal has been determined to be incapable. The  
34 physician or provider shall continue to obtain the principal's informed consent to all  
35 mental health treatment decisions if the principal is capable of providing informed  
36 consent or refusal.

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

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

42           (2) The availability of treatments requested; and

43           (3) Applicable law.

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

7 (c) Except as provided in subsection (b) of this section, the physician or provider  
8 may subject the principal to mental health treatment in a manner contrary to the  
9 principal's wishes as expressed in an advance instruction for mental health treatment  
10 only:

11 (1) If the principal is committed to a 24-hour facility pursuant to Article 5  
12 of G.S. 122C and treatment is authorized in compliance with G.S.  
13 122C-57 and administrative rule; or

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

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

18 (e) When making an advance instruction, the principal shall indicate whether the  
19 advance instruction may be revoked only if the principal is capable, or if it may be  
20 revoked at any time. If the advance instruction directs that it may be revoked only if the  
21 principal is capable, then the revocation is effective when a capable principal  
22 communicates the revocation to the attending physician or other provider. If the advance  
23 instruction directs that the revocation may be made at any time, then a revocation is  
24 effective when made by a capable principal, or when an incapable principal  
25 communicates the revocation to the attending physician or other provider, as the case  
26 may be. The attending physician or other provider shall note the revocation as part of the  
27 principal's medical record.

28 (f) If an advance instruction indicates that it may be revoked at any time, then the  
29 advance instruction continues in effect unless and until it is revoked by the principal. If  
30 an advance instruction indicates that it may be revoked only if the principal is capable,  
31 then an advance instruction that has not become operative expires at the end of two years  
32 from the date of execution, unless earlier revoked by the capable principal. The authority  
33 of a named attorney-in-fact and any alternative attorney-in-fact named in the advance  
34 instruction continues in effect as long as the advance instruction appointing the attorney-  
35 in-fact is in effect or until the attorney-in-fact has withdrawn.

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

41 **"§ 122C-75. Scope of authority of attorney-in-fact; powers and duties; limitation on**  
42 **liability.**

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

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

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

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

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

17       (d) The attorney-in-fact is not, as a result of acting in that capacity, personally  
18 liable for the cost of treatment provided to the principal.

19       (e) Except to the extent the right is limited by the advance instruction or any  
20 federal law, an attorney-in-fact has the same right as the principal to receive information  
21 regarding the proposed mental health treatment and to receive, review, and consent to  
22 disclosure of medical records relating to that treatment. This right of access does not  
23 waive any evidentiary privilege.

24       (f) In exercising authority under the advance instruction, the attorney-in-fact shall  
25 act consistently with the desires of the principal as expressed in the advance instruction.  
26 If the principal's desires are not expressed in the advance instruction and are not  
27 otherwise known by the attorney-in-fact, the attorney-in-fact shall act in what the  
28 attorney-in-fact in good faith believes to be the manner in which the principal would act  
29 if the principal was not incapable.

30       (g) The appointment of an attorney-in-fact shall not revoke, restrict, or otherwise  
31 affect any nonmental health treatment powers granted by the principal to a health care  
32 agent pursuant to a health care power of attorney or attorney-in-fact pursuant to a general  
33 power of attorney; provided that the mental health treatment powers granted to the  
34 attorney-in-fact shall be superior to any similar powers granted by the principal to a  
35 health care agent pursuant to a health care power of attorney or an attorney-in-fact  
36 pursuant to a general power of attorney.

37       (h) An attorney-in-fact is not subject to criminal prosecution, civil liability, or  
38 professional disciplinary action for any action taken in good faith pursuant to an advance  
39 instruction for mental health treatment.

40       (i) An attorney-in-fact may withdraw by giving notice to the principal. If a  
41 principal is incapable, the attorney-in-fact may withdraw by giving notice to the attending  
42 physician or provider. The attending physician or provider shall note the withdrawal as  
43 part of the principal's medical record.

(j) A person who has withdrawn under the provision of subsection (i) of this section may rescind the withdrawal by executing an acceptance after the date of the withdrawal. The acceptance shall be in the same or similar form as provided for in G.S. 122C-77 for accepting an appointment. A person who rescinds a withdrawal shall give notice to the principal if the principal is capable or to the principal's health care provider if the principal is incapable.

**"§ 122C-76. Penalty.**

It is a Class 2 misdemeanor for a person, without authorization of the principal, willfully to alter, forge, conceal, or destroy an instrument, the reinstatement or revocation of an instrument, or any other evidence or document reflecting the principal's desires and interests, with the intent or effect of affecting a mental health treatment decision.

**"§ 122C-77. Statutory form for advance instruction for mental health treatment.**

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

**' ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT**

I, \_\_\_\_\_, being an adult of sound mind, willfully and voluntarily make this advance instruction for mental health treatment to be followed if it is determined by a physician or eligible psychologist that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. 'Mental health treatment' means the process of providing for the physical, emotional, psychological, and social needs of the principal. 'Mental health treatment' includes electroconvulsive treatment (ECT), commonly referred to as 'shock treatment', treatment of mental illness with psychotropic medication, and admission to and retention in a facility for care or treatment of mental illness.

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

**PSYCHOACTIVE MEDICATIONS**

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

I consent to the administration of the following medications:

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

Conditions or limitations:

**ELECTROCONVULSIVE (ECT) TREATMENT (COMMONLY REFERRED TO AS "SHOCK TREATMENT" )**

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding electroconvulsive treatment (ECT), (commonly referred to as "shock treatment" ) are as follows:

\_\_\_\_\_ I consent to the administration of electroconvulsive treatment (ECT), (commonly referred to as "shock treatment" ).

\_\_\_\_\_ I do not consent to the administration of electroconvulsive treatment (ECT), (commonly referred to as "shock treatment" ).

Conditions or limitations:

**ADMISSION TO AND RETENTION IN FACILITY**

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

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

My facility preference is

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

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

Conditions or limitations:

**ADDITIONAL INSTRUCTIONS**

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

In case of mental health crisis, please contact:

1. Name:

Home Address:

Home Telephone Number:

Work Telephone Number:

Relationship to Me:

2. Name:

Home Address:

Home Telephone Number:

Work Telephone Number:

Relationship to Me:

3. My Physician:

Name: Telephone Number:

4. My Therapist:

Name: Telephone Number:

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

1 The following may help me avoid a hospitalization:

2  
3  
4  
5  
6  
7  
8  
9

4 I generally react to being hospitalized as follows:

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

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

11  
12  
13  
14

15 Other instructions:

16  
17  
18  
19

20 I have attached an additional sheet of instructions to be followed and  
21 considered part of this advance instruction.

22 **REVOCATION**

23 (Initial one or the other, but not both, of the following, as desired):

24 \_\_\_\_\_ If I become incapable, and this advance instruction becomes operative,  
25 I, at that point, give up my power to revoke this advance instruction.  
26 While I am incapable, I direct that this advance instruction remain in  
27 effect and operative to carry out my instructions for treatment as stated  
28 in this advance instruction. I understand that if I select this revocation  
29 option, this advance instruction, if it has not become operative, will  
30 expire at the end of two years from the date of its execution, or earlier if  
31 I revoke it before the two years have expired.

33 [or]

34 \_\_\_\_\_ If I become incapable, and this advance instruction goes into effect, I  
35 retain my power to revoke it at any time. I understand that any  
36 revocation made by me will, at the time the revocation is made, end any  
37 benefit that I now seek and that would otherwise derive through this  
38 advance instruction.

41 **ATTORNEY-IN-FACT**

42 I hereby appoint:

43 Name:

1 Home Address:  
2 Home Telephone Number: Work Telephone Number:  
3 to act as my attorney-in-fact to make decisions regarding my mental health treatment if I  
4 become incapable of giving or withholding informed consent for that treatment.

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

8 Name:  
9 Home Address:  
10 Home Telephone Number: Work Telephone Number:

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

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

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

20  
21 \_\_\_\_\_ Signature of Principal \_\_\_\_\_ Date

22  
23 **AFFIRMATION OF WITNESSES**

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

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

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

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

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

34 Witnessed by:

35 Witness: \_\_\_\_\_ Date:

36 Witness: \_\_\_\_\_ Date:

37 STATE OF NORTH CAROLINA

38 COUNTY OF

39

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

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

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

6  
 7 Signature of Attorney-in-fact \_\_\_\_\_ Date

8  
 9 Signature of Alternative Attorney-in-fact \_\_\_\_\_ Date' "

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

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

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

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

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

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

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

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

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

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

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

21 Section 4. This act becomes effective January 1, 1998.