

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS -- ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT

Introduced By: Senators DiPalma, Miller, Coyne, and Seveney

Date Introduced: March 17, 2022

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 40.1 of the General Laws entitled "BEHAVIORAL HEALTHCARE,
2 DEVELOPMENTAL DISABILITIES AND HOSPITALS" is hereby amended by adding thereto
3 the following chapter:

4 CHAPTER 5.5

5 ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT

6 **40.1-5.5-1. Short title.**

7 This chapter shall be known and may be cited as the "Advance Instruction for Mental
8 Health Treatment".

9 **40.1-5.5-2. Purpose and intent.**

10 (a) The general assembly recognizes as a matter of public policy the fundamental right of
11 an individual to control the decisions relating to the individual's mental health care.

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

16 (c) This chapter is intended and shall be construed to be consistent with the provisions of
17 chapter 5 of this title; provided that, in the event of a conflict between the provisions of this chapter
18 and chapter 5 of this title, the provisions of this chapter shall control.

1 **40.1-5.5-3. Definitions.**

2 As used in this chapter, the following terms shall have the following meanings:

3 (1) "Advance instruction for mental health treatment" or "advance instruction" means a
4 written instrument, signed in the presence of two (2) qualified witnesses who believe the principal
5 to be of sound mind at the time of the signing, and acknowledged before a notary public, pursuant
6 to which the principal makes a declaration of instructions, information, and preferences regarding
7 the principal's mental health treatment and states that the principal is aware that the advance
8 instruction authorizes a mental health treatment provider to act according to the instruction. It may
9 also state the principal's instructions regarding, but not limited to, consent to or refusal of mental
10 health treatment when the principal is incapable.

11 (2) "Attending physician" means the physician who has primary responsibility for the care
12 and treatment of the principal.

13 (3) "Incapable" means that, in the opinion of a physician or eligible psychologist, the person
14 currently lacks sufficient understanding or capacity to make and communicate mental health
15 treatment decisions. As used in this chapter, the term "eligible psychologist" has the same meaning
16 as "psychologist" as set forth in § 40.1-5-2.

17 (4) "Mental health treatment" means the process of providing for the physical, emotional,
18 psychological, and social needs of the principal for the principal's mental illness. "Mental health
19 treatment" includes, but is not limited to, electroconvulsive treatment (ECT), commonly referred
20 to as "shock treatment", treatment of mental illness with psychotropic medication, and admission
21 to and retention in a facility for care or treatment of mental illness.

22 (5) "Principal" means the person making the advance instruction.

23 (6) "Qualified witness" means a witness who affirms that the principal is personally known
24 to the witness, that the principal signed or acknowledged the principal's signature on the advance
25 instruction in the presence of the witness, that the witness believes the principal to be of sound
26 mind and not to be under duress, fraud, or undue influence, and that the witness is not:

27 (i) The attending physician or mental health service provider or an employee of the
28 physician or mental health treatment provider;

29 (ii) An owner, operator, or employee of an owner or operator of a health care facility in
30 which the principal is a patient or resident; or

31 (iii) Related within the third degree to the principal or to the principal's spouse.

32 **40.1-5.5-4. Scope, use, and authority of advance instruction for mental health**
33 **treatment.**

34 (a) Any adult of sound mind may make an advance instruction regarding mental health

1 treatment. The advance instruction may include consent to or refusal of mental health treatment.

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

8 (c) An individual shall not be required to execute or to refrain from executing an advance
9 instruction as a condition for insurance coverage, as a condition for receiving mental or physical
10 health services, as a condition for receiving privileges while in a facility, or as a condition of
11 discharge from a facility. A principal, through an advance instruction, may grant or withhold
12 authority for mental health treatment, including, but not limited to, the use of psychotropic
13 medication, electroconvulsive treatment, and admission to and retention in a facility for the care or
14 treatment of mental illness.

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

19 (e) If, following the execution of an advance instruction for mental health treatment, a court
20 of competent jurisdiction appoints a guardian of the person of the principal, or a general guardian
21 with powers over the person of the principal, the guardian shall follow the advance instruction
22 consistent with § 40.1-5-36.

23 (f) An advance instruction for mental health treatment may be combined with a health care
24 power of attorney or general power of attorney that is executed in accordance with the requirements
25 of chapter 5 of this title as long as each form shall be executed in accordance with its own statute.

26 **40.1-5.5-5. Effectiveness, duration and revocation.**

27 (a) A validly executed advance instruction becomes effective upon its proper execution and
28 remains valid until revoked.

29 (b) The attending physician or other mental health treatment provider may consider valid
30 and rely upon an advance instruction, or a copy of that advance instruction, in the absence of actual
31 knowledge of its revocation or invalidity.

32 (c) An attending physician or other mental health treatment provider may presume that a
33 person who executed an advance instruction in accordance with this chapter was of sound mind
34 and acted voluntarily when he or she executed the advance instruction.

1 (d) An attending physician or other mental health treatment provider shall act in accordance
2 with an advance instruction when the principal has been determined to be incapable. If a patient is
3 incapable, an advance instruction executed in accordance with this chapter is presumed to be valid.

4 (e) The attending physician or mental health treatment provider shall continue to obtain the
5 principal's informed consent to all mental health treatment decisions when the principal is capable
6 of providing informed consent or refusal. Unless the principal is deemed incapable by the attending
7 physician or eligible psychologist, the instructions of the principal at the time of treatment shall
8 supersede the declarations expressed in the principal's advance instruction.

9 (f) The fact of a principal having executed an advance instruction shall not be considered
10 an indication of a principal's capacity to make or communicate mental health treatment decisions
11 at such times as those decisions are required.

12 (g) Upon being presented with an advance instruction, an attending physician or other
13 mental health treatment provider shall make the advance instruction a part of the principal's medical
14 record. When acting under authority of an advance instruction, an attending physician or other
15 mental health treatment provider shall comply with the advance instruction unless:

16 (1) Compliance, in the opinion of the attending physician or other mental health treatment
17 provider, is not consistent with generally accepted community practice standards of treatment to
18 benefit the principal;

19 (2) Compliance is not consistent with the availability of treatments requested;

20 (3) Compliance is not consistent with applicable law;

21 (4) The principal is committed to a twenty-four (24) hour facility; or

22 (5) Compliance, in the opinion of the attending physician or other mental health treatment
23 provider, is not consistent with appropriate treatment in case of an emergency endangering life or
24 health. In the event that one part of the advance instruction is unable to be followed because of one
25 or more of the above exceptions, all other parts of the advance instruction shall nonetheless be
26 followed.

27 (h) If the attending physician or other mental health treatment provider is unwilling at any
28 time to comply with any part or parts of an advance instruction for one or more of the reasons set
29 out in subsections (g)(1) through (g)(5) of this section, the attending physician or other mental
30 health care treatment provider shall promptly notify the principal and, if applicable, the health care
31 agent and shall document the reason for not complying with the advance instruction and shall
32 document the notification in the principal's medical record.

33 (i) An advance instruction does not limit any authority of an attending physician or other
34 mental health treatment provider to either take a person into custody, or to admit, retain, or treat a

1 person in a facility pursuant to chapter 5 of this title.

2 (j) An advance instruction may be revoked at any time by the principal as long as the
3 principal is not incapable. The principal may exercise this right of revocation in any manner by
4 which the principal is able to communicate an intent to revoke and by notifying the revocation to
5 the treating physician or other mental health treatment provider. The attending physician or other
6 mental health treatment provider shall note the revocation as part of the principal's medical record.

7 **40.1-5.5-6. Reliance on advance instruction for mental health treatment.**

8 (a) An attending physician or eligible psychologist who in good faith determines that the
9 principal is or is not incapable for the purpose of deciding whether to proceed or not to proceed
10 according to an advance instruction, is not subject to criminal prosecution, civil liability, or
11 professional disciplinary action for making and acting upon that determination.

12 (b) In the absence of actual knowledge of the revocation of an advance instruction, no
13 attending physician or other mental health treatment provider shall be subject to criminal
14 prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of
15 the provision of treatment to a principal in accordance with this chapter unless the absence of actual
16 knowledge resulted from the negligence of the attending physician or mental health treatment
17 provider.

18 (c) An attending physician or mental health treatment provider who administers or does
19 not administer mental health treatment according to and in good faith reliance upon the validity of
20 an advance instruction is not subject to criminal prosecution, civil liability, or professional
21 disciplinary action resulting from a subsequent finding of an advance instruction's invalidity.

22 (d) No attending physician or mental health treatment provider who administers or does
23 not administer treatment under authorization obtained pursuant to this chapter shall incur liability
24 arising out of a claim to the extent that the claim is based on lack of informed consent or
25 authorization for this action.

26 (e) This section shall not be construed as affecting or limiting any liability that arises out
27 of a negligent act or omission in connection with the medical diagnosis, care, or treatment of a
28 principal under an advance instruction or that arises out of any deviation from reasonable medical
29 standards.

30 **40.1-5.5-7. Penalties.**

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

1 **40.1-5.5-8. Statutory form for advance instruction for mental health treatment.**

2 (a) This chapter shall not be construed to invalidate an advance instruction for mental
3 health treatment that was executed prior to January 1, 2023, and was otherwise valid.

4 (b) The use of the following or similar form after the effective date of this chapter in the
5 creation of an advance instruction for mental health treatment is lawful, and, when used, it shall
6 specifically meet the requirements and be construed in accordance with the provisions of this
7 chapter.

8 ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT

9 I, _____, being an adult of sound mind, willfully and
10 voluntarily make this advance instruction for mental health treatment to be followed if it is
11 determined by a physician or eligible psychologist that my ability to receive and evaluate
12 information effectively or communicate decisions is impaired to such an extent that I lack the
13 capacity to refuse or consent to mental health treatment. "Mental health treatment" means the
14 process of providing for the physical, emotional, psychological, and social needs of the principal.
15 "Mental health treatment" includes electroconvulsive treatment (ECT), commonly referred to as
16 "shock treatment", treatment of mental illness with psychotropic medication, and admission to and
17 retention in a facility for care or treatment of mental illness. I understand that under § 40.1-5-6,
18 other than for specific exceptions stated there, mental health treatment may not be administered
19 without my express and informed written consent or, if I am incapable of giving my informed
20 consent, the express and informed consent of my legally responsible person, my health care agent
21 named pursuant to a valid health care power of attorney, or my consent expressed in this advance
22 instruction for mental health treatment. I understand that I may become incapable of giving or
23 withholding informed consent for mental health treatment due to the symptoms of a diagnosed
24 mental disorder. These symptoms may include:

25 PSYCHOACTIVE MEDICATIONS

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

28 (Place initials beside choice.)

29 I consent to the administration of the following medications:

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

31 _____

32 _____

33 Conditions or limitations: _____

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ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health treatment, my instructions regarding admission to and retention in a health care facility for mental health treatment are as follows: (Place initials beside choice.)

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 ten (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 I generally react to being hospitalized as follows:

5 _____

6 _____

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

8 _____

9 _____

10 _____

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

12 _____

13 _____

14 _____

15 Instructions concerning any other medical interventions, such as electroconvulsive (ECT)

16 treatment (commonly referred to as "shock treatment"):

17 _____

18 _____

19 _____

20 _____

21 Other instructions:

22 _____

23 _____

24 _____

25 _____

26 I have attached an additional sheet of instructions to be followed and considered part of

27 this advance instruction.

28 SHARING OF INFORMATION BY PROVIDERS

29 I understand that the information in this document may be shared by my mental health

30 treatment provider with any other mental health treatment provider who may serve me when

31 necessary to provide treatment in accordance with this advance instruction.

32 Other instructions about sharing of information:

33 _____

34 _____

1 SIGNATURE OF PRINCIPAL

2 By signing here, I indicate that I am mentally alert and competent, fully informed as to the
3 contents of this document, and understand the full impact of having made this advance instruction
4 for mental health treatment.

5 Signature of Principal: _____

6 Date: _____

7 NATURE OF WITNESSES

8 I hereby state that the principal is personally known to me, that the principal signed or
9 acknowledged the principal's signature on this advance instruction for mental health treatment in
10 my presence, that the principal appears to be of sound mind and not under duress, fraud, or undue
11 influence, and that I am not:

12 (1) The attending physician or mental health service provider or an employee of the
13 physician or mental health treatment provider;

14 (2) An owner, operator, or employee of an owner or operator of a health care facility in
15 which the principal is a patient or resident; or

16 (3) Related within the third degree to the principal or to the principal's spouse.

17 AFFIRMATION OF WITNESSES

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

22 (1) A person appointed as an attorney-in-fact by this document;

23 (2) The principal's attending physician or mental health service provider or a relative of the
24 physician or provider;

25 (3) The owner, operator, or relative of an owner or operator of a facility in which the
26 principal is a patient or resident; or

27 (4) A person related to the principal by blood, marriage, or adoption.

28 Witnessed by:

29 Witness: _____

30 Date: _____

31 Witness: _____

32 Date: _____

33 STATE OF RHODE ISLAND

34 COUNTY OF _____

1 CERTIFICATION OF NOTARY PUBLIC

2 I, _____, a Notary Public in the State of Rhode Island, hereby
3 certify that _____ appeared before me and swore or affirmed to me and to the
4 witnesses in my presence that this instrument is an advance instruction for mental health treatment,
5 and that he/she willingly and voluntarily made and executed it as his/her free act and deed for the
6 purposes expressed in it. I further certify that _____ and
7 _____, witnesses, appeared before me and swore or affirmed that they
8 witnessed _____ sign the attached advance instruction for mental health
9 treatment, believing him/her to be of sound mind; and also swore that at the time they witnessed
10 the signing they were not: (1) The attending physician or mental health treatment provider or an
11 employee of the physician or mental health treatment provider; and (2) They were not an owner,
12 operator, or employee of an owner or operator of a health care facility in which the principal is a
13 patient or resident; and (3) They were not related within the third degree to the principal or to the
14 principal's spouse. I further certify that I am satisfied as to the genuineness and due execution of
15 the _____ instrument. This is the _____ day
16 of _____,

17 _____
18 Notary Public: _____
19 My Commission expires: _____

20 NOTICE TO PERSON MAKING AN INSTRUCTION FOR MENTAL HEALTH
21 TREATMENT

22 This is an important legal document. It creates an instruction for mental health treatment.
23 Before signing this document you should know these important facts: This document allows you
24 to make decisions in advance about certain types of mental health treatment. The instructions you
25 include in this declaration will be followed if a physician or eligible psychologist determines that
26 you are incapable of making and communicating treatment decisions. Otherwise you will be
27 considered capable to give or withhold consent for the treatments. Your instructions may be
28 overridden if you are being held in accordance with civil commitment law. Under the Health Care
29 Power of Attorney you may also appoint a person as your health care agent to make treatment
30 decisions for you if you become incapable. You have the right to revoke this document at any time
31 you have not been determined to be incapable. YOU MAY NOT REVOKE THIS ADVANCE
32 INSTRUCTION WHEN YOU ARE FOUND INCAPABLE BY A PHYSICIAN OR OTHER
33 AUTHORIZED MENTAL HEALTH TREATMENT PROVIDER. A revocation is effective when
34 it is communicated to your attending physician or other provider. The physician or other provider

1 shall note the revocation in your medical record. To be valid, this advance instruction must be
2 signed by two (2) qualified witnesses, personally known to you, who are present when you sign or
3 acknowledge your signature. It must also be acknowledged before a notary public.

4 NOTICE TO PHYSICIAN OR OTHER MENTAL HEALTH TREATMENT PROVIDER

5 Under Rhode Island law, a person may use this advance instruction to provide consent for
6 future mental health treatment if the person later becomes incapable of making those decisions.
7 Under the Health Care Power of Attorney the person may also appoint a health care agent to make
8 mental health treatment decisions for the person when incapable. A person is "incapable" when in
9 the opinion of a physician or eligible psychologist the person currently lacks sufficient
10 understanding or capacity to make and communicate mental health treatment decisions. This
11 document becomes effective upon its proper execution and remains valid unless revoked. Upon
12 being presented with this advance instruction, the physician or other provider must make it a part
13 of the person's medical record. The attending physician or other mental health treatment provider
14 must act in accordance with the statements expressed in the advance instruction when the person is
15 determined to be incapable, unless compliance is not consistent with § 40.1-5.5-5(g). The physician
16 or other mental health treatment provider shall promptly notify the principal and, if applicable, the
17 health care agent, and document noncompliance with any part of an advance instruction in the
18 principal's medical record. The physician or other mental health treatment provider may rely upon
19 the authority of a signed, witnessed, dated, and notarized advance instruction, as provided in § 40.1-
20 5.5-6.

21 **40.1-5.5-9. Severability.**

22 If any provisions of this chapter or the application thereof to any person or circumstance is
23 for any reason held to be invalid, the remainder of the chapter and the application of such provision
24 to other persons or circumstances shall not be affected thereby.

25 SECTION 2. This act shall take effect on January 1, 2023.

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LC004860
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS -- ADVANCE INSTRUCTION FOR MENTAL HEALTH TREATMENT

1 This act would allow an individual to exercise their right to consent to or refuse mental
2 health treatment through an advance instruction when the individual lacks sufficient understanding
3 or capacity to make or communicate mental health treatment decisions. A validly executed advance
4 instruction would become effective upon its proper execution and remain effective until revoked
5 by the individual. This act would allow an attending physician or other mental health treatment
6 provider to rely upon such advance instruction, and act in accordance with the advance instruction,
7 when an individual has been determined to be incapable without fear of criminal prosecution, civil
8 liability or professional disciplinary action.

9 This act would take effect on January 1, 2023.

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