

House Bill 752

By: Representatives Cooper of the 43rd, Dempsey of the 13th, Hogan of the 179th, Oliver of the 82nd, and Hatchett of the 150th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 37 of the Official Code of Georgia Annotated, relating to mental health, so
2 as to provide for a psychiatric advance directive; to provide for a competent adult to express
3 his or her mental health care treatment preferences and desires directly through instructions
4 written in advance and indirectly through appointing an agent to make mental health care
5 decisions on behalf of that person; to provide a short title; to provide for intent; to provide
6 for definitions; to provide for the scope, use, and authority of a psychiatric advance directive;
7 to provide for the appointment, powers, duties, and access to information of a mental health
8 care agent; to provide for limitations on serving as a mental health care agent and for an
9 agent's ability to withdraw as agent; to provide for revocation of a psychiatric advance
10 directive; to provide for the use and effectiveness of a psychiatric advance directive; to
11 provide for the responsibilities and duties of physicians and other providers using a
12 psychiatric advance directive; to provide for civil and criminal immunity under certain
13 circumstances; to provide a statutory psychiatric advance directive form; to provide for
14 construction of such form; to amend Titles 16, 29, 31, 37, and 49 of the Official Code of
15 Georgia Annotated, relating to crimes and offenses, guardian and ward, health, mental health,
16 and social services, respectively, so as to provide for interaction and relationship with
17 advance directives for health care; to provide for application; to provide for statutory

18 construction; to provide for conforming references and consistent terminology; to provide
19 for related matters; to repeal conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 PART I
22 SECTION 1-1.

23 Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended by
24 adding a new chapter to read as follows:

25 "CHAPTER 11

26 37-11-1.

27 This chapter shall be known and may be cited as the 'Psychiatric Advance Directive Act.'

28 37-11-2.

29 This chapter is enacted in recognition of the fundamental right of an individual to have
30 power over decisions relating to his or her mental health care as a matter of public policy.

31 37-11-3.

32 As used in this chapter, the term:

33 (1) 'Capable' means not incapable of making mental health care decisions.

34 (2) 'Competent adult' means a person of sound mind who is 18 years of age or older or
35 is an emancipated minor.

36 (3) 'Declarant' means a person who has executed a psychiatric advance directive
37 authorized by this chapter.

38 (4) 'Facility' means a hospital, skilled nursing facility, hospice, institution, home,
39 residential or nursing facility, treatment facility, and any other facility or service which
40 has a valid permit or provisional permit issued under Chapter 7 of Title 31 or which is
41 licensed, accredited, or approved under the laws of any state, and includes hospitals
42 operated by the United States government or by any state or subdivision thereof.

43 (5) 'Incapable of making mental health care decisions' means that, in the opinion of a
44 physician or licensed psychologist who has personally examined a declarant, or in the
45 opinion of a court, a declarant lacks the capacity to understand the risks and benefits of,
46 and the alternatives to, a mental health care decision under consideration and is unable
47 to give or communicate rational reasons for mental health care decisions because of
48 impaired thinking, impaired ability to receive and evaluate information, or other cognitive
49 disability.

50 (6) 'Mental health care' means any care, treatment, service, or procedure to maintain,
51 diagnose, treat, or provide for a declarant's mental health.

52 (7) 'Mental health care agent' or 'agent' means a person appointed by a declarant to act
53 for and on behalf of such declarant to make decisions related to consent, refusal, or
54 withdrawal of any type of mental health care when such declarant is incapable of making
55 mental health care decisions for himself or herself. Such term shall include any back-up
56 mental health care agent appointed by a declarant.

57 (8) 'Physician' means a person lawfully licensed in this state to practice medicine
58 pursuant to Article 2 of Chapter 34 of Title 43 and, if the declarant is receiving mental
59 health care in another state, a person lawfully licensed in such state.

60 (9) 'Provider' means any person administering mental health care who is licensed,
61 certified, or otherwise authorized or permitted by law to administer mental health care in
62 the ordinary course of business or the practice of a profession, including, but not limited
63 to, professional counselors, psychologists, clinical social workers, and clinical nurse

64 specialists in psychiatric and mental health; a physician; or any person acting for any such
65 authorized person.

66 (10) 'Psychiatric advance directive' or 'directive' means a written document voluntarily
67 executed by a person in accordance with the requirements of Code Section 37-11-9.

68 37-11-4.

69 (a) A competent adult may execute a psychiatric advance directive containing mental
70 health care preferences, information, or instructions regarding his or her mental health care
71 that authorizes and consents to a provider or facility acting in accordance with such
72 directive. A directive may include consent to or refusal of specified mental health care.

73 (b) A psychiatric advance directive may include, but shall not be limited to:

74 (1) The names and telephone numbers of individuals to contact in the event a declarant
75 has a mental health crisis;

76 (2) Situations that have been known to cause a declarant to experience a mental health
77 crisis;

78 (3) Responses that have been known to de-escalate a declarant's mental health crisis;

79 (4) Responses that may assist a declarant to remain in such declarant's home during a
80 mental health crisis;

81 (5) The types of assistance that may help stabilize a declarant if it becomes necessary to
82 enter a facility; and

83 (6) Medications a declarant is taking or has taken in the past and the effects of such
84 medications.

85 (c) A psychiatric advance directive may include a mental health care agent.

86 (d) If a declarant chooses not to appoint an agent, the instructions and desires of a
87 declarant as set forth in the directive shall be followed to the fullest extent possible by
88 every provider or facility to whom the directive is communicated, subject to the right of the

89 provider or facility to refuse to comply with the directive as set forth in Code Section
90 37-11-12.

91 (e) A person shall not be required to execute or refrain from executing a directive as a
92 criterion for insurance, as a condition for receiving mental health care or physical health
93 care services, or as a condition of discharge from a facility.

94 (f) Unless a declarant indicates otherwise, a psychiatric advance directive shall take
95 precedence over any advance directive for health care executed pursuant to Chapter 32 of
96 Title 31, durable power of attorney for health care creating a health care agency under the
97 former Chapter 36 of Title 31, as such chapter existed on and before June 30, 2007, health
98 care proxy, or living will that a declarant executed prior to executing a psychiatric advance
99 directive to the extent that such other documents relate to mental health care and are
100 inconsistent with the psychiatric advance directive.

101 (g) No provision of this chapter shall be construed to bar use by a declarant of an advance
102 directive for health care under Chapter 32 of Title 31.

103 37-11-5.

104 (a) A declarant may designate a competent adult to act as his or her agent to make
105 decisions about his or her mental health care. An alternative agent may also be designated.

106 (b) An agent shall have no authority to make mental health care decisions when a declarant
107 is capable.

108 (c) The authority of an agent shall continue in effect so long as the directive appointing
109 such agent is in effect or until such agent has withdrawn.

110 (d) An agent appointed by a declarant:

111 (1) Shall be authorized to make any and all mental health care decisions on behalf of
112 such declarant which such declarant could make if such declarant were capable;

113 (2) Shall exercise granted powers in a manner consistent with the intent and desires of
114 such declarant. If such declarant's intentions and desires are not expressed or are unclear,

115 the agent shall act in such declarant's best interests, considering the benefits, burdens, and
116 risks of such declarant's circumstances and mental health care options;
117 (3) Shall not be under any duty to exercise granted powers or to assume control of or
118 responsibility for such declarant's mental health care; but, when granted powers are
119 exercised, the agent shall be required to use due care to act for the benefit of such
120 declarant in accordance with the terms of the psychiatric advance directive;
121 (4) Shall not make a mental health care decision different from or contrary to such
122 declarant's instruction if such declarant is capable at the time of the request for consent
123 or refusal of mental health care;
124 (5)(A) May make a mental health care decision different from or contrary to such
125 declarant's instruction in such declarant's psychiatric advance directive if:
126 (i) Such declarant's provider or facility determines in good faith at the time of consent
127 or refusal of mental health care that the mental health care requested or refused in the
128 directive's instructions is:
129 (I) Unavailable;
130 (II) Medically contraindicated in a manner that would result in substantial harm to
131 such declarant if administered; or
132 (III) In the opinion of the provider or facility, inconsistent with reasonable medical
133 standards to benefit such declarant or has proven ineffective in treating such
134 declarant's mental health condition; and
135 (ii) The mental health care requested or refused in the directive's instructions is
136 unlikely to be delivered by another provider or facility in the community under the
137 circumstances.
138 (B) In the event the agent exercises authority under one of the circumstances set forth
139 in subparagraph (A) of this paragraph, the agent shall exercise the authority in a manner
140 consistent with the intent and desires of such declarant. If such declarant's intentions
141 and desires are not expressed or are unclear, the agent shall act in such declarant's best

142 interests, considering the benefits, burdens, and risks of such declarant's circumstances
143 and mental health care options;

144 (6) Shall not delegate authority to make mental health care decisions; and

145 (7) Has the following general powers, unless expressly limited in the psychiatric advance
146 directive:

147 (A) To sign and deliver all instruments, negotiate and enter into all agreements, and do
148 all other acts reasonably necessary to exercise the powers granted to the agent;

149 (B) To consent to, authorize, refuse, or withdraw consent to any providers and any type
150 of mental health care of such declarant, including any medication program;

151 (C) To request and consent to admission or discharge from any facility; and

152 (D) To contract for mental health care and facilities in the name of and on behalf of
153 such declarant, and the agent shall not be personally financially liable for any services
154 or mental health care contracted for on behalf of such declarant.

155 (e) A court may remove a mental health care agent if it finds that an agent is not acting in
156 accordance with the declarant's treatment instructions as expressed in his or her directive.

157 37-11-6.

158 (a) Except to the extent that a right is limited by a directive or by any state or federal law
159 or regulation, an agent shall have the same right as a declarant to receive information
160 regarding the proposed mental health care and to receive, review, and consent to disclosure
161 of medical records, including records relating to the treatment of a substance use disorder,
162 relating to that mental health care. All of a declarant's mental health information and
163 medical records shall remain otherwise protected under state and federal privilege, and this
164 right of access shall not waive any evidentiary privilege.

165 (b) At the declarant's expense and subject to reasonable rules of a provider or facility to
166 prevent disruption of the declarant's mental health care, an agent shall have the same right
167 the declarant has to examine, copy, and consent to disclosure of all the declarant's medical

168 records that the agent deems relevant to the exercise of the agent's powers, whether the
169 records relate to mental health or any other medical condition and whether they are in the
170 possession of or maintained by any physician, psychiatrist, psychologist, therapist, facility,
171 or other health care provider, despite contrary provisions of any other statute or rule of law.

172 (c) The authority given an agent by this Code section shall include all rights that a
173 declarant has under the federal Health Insurance Portability and Accountability Act of
174 1996, P.L. 104-191, and its implementing regulations regarding the use and disclosure of
175 individually identifiable health information and other medical records.

176 37-11-7.

177 The following persons shall not serve as a declarant's agent:

178 (1) Such declarant's provider or an employee of that provider unless such employee is
179 a family member, friend, or associate of such declarant and is not directly involved in
180 such declarant's mental health care; or

181 (2) An employee of the Department of Behavioral Health and Developmental Disabilities
182 or of a local public mental health agency or of any organization that contracts with a local
183 public mental health authority unless such employee is a family member, friend, or
184 associate of such declarant and is not directly involved in such declarant's mental health
185 care.

186 37-11-8.

187 An agent may withdraw by giving written notice to a declarant. If such declarant is
188 incapable of making mental health care decisions, such agent may withdraw by giving
189 written notice to the provider or facility that is providing mental health care to the declarant
190 at the time of the agent's withdrawal. Any provider or facility that receives an agent's
191 withdrawal shall document the withdrawal as part of such declarant's medical record.

192 37-11-9.

193 (a) A psychiatric advance directive shall be effective only if it is signed by the declarant
194 and witnessed by two competent adults, but such witnesses shall not be required to be
195 together or present when such declarant signs the directive. The witnesses shall attest that
196 the declarant is known to them, appears to be of sound mind, is not under duress, fraud, or
197 undue influence, and signed his or her directive in the witness's presence or acknowledges
198 signing his or her directive. For purposes of this subsection, the term 'of sound mind'
199 means having a decided and rational desire to create a psychiatric advance directive.

200 (b) A validly executed psychiatric advance directive shall become effective upon its proper
201 execution and shall remain in effect until revoked by the declarant.

202 (c) The following persons shall not serve as witnesses to the signing of a directive:

203 (1) A provider who is providing mental health care to the declarant at the time such
204 directive is being executed or an employee of such provider unless such employee is a
205 family member, friend, or associate of such declarant and is not directly involved in the
206 declarant's mental health care;

207 (2) An employee of the Department of Behavioral Health and Developmental Disabilities
208 or of a local public mental health agency or of any organization that contracts with a local
209 public mental health authority unless such person is a family member, friend, or associate
210 of such declarant and is not directly involved in the declarant's mental health care; or

211 (3) A person selected to serve as the declarant's mental health care agent.

212 (d) A person who witnesses a psychiatric advance directive in good faith and in
213 accordance with this chapter shall not be civilly liable or criminally prosecuted for actions
214 taken by an agent.

215 (e) A copy of a directive executed in accordance with this Code section shall be valid and
216 have the same meaning and effect as the original document.

217 37-11-10.

218 A directive may be revoked in whole or in part by a declarant at any time so long as such
219 declarant is capable. Any revocation of the directive communicated to a provider or
220 facility by a capable declarant shall also be documented in such declarant's medical record.

221 37-11-11.

222 (a) Upon being presented with a psychiatric advance directive, a provider or facility shall
223 make the directive a part of a declarant's medical record.

224 (b) In the absence of specific knowledge of the revocation or invalidity of a directive, a
225 provider or facility providing mental health care to a declarant may presume that a person
226 who executed a psychiatric advance directive in accordance with this chapter was of sound
227 mind and acted voluntarily when executing such directive and may rely upon a psychiatric
228 advance directive or a copy of that directive.

229 (c) A provider or facility shall be authorized to act in accordance with a directive when a
230 declarant is incapable of making mental health care decisions.

231 (d) A provider or facility shall continue to obtain a declarant's consent to all mental health
232 care decisions if he or she is capable of providing consent or refusal.

233 37-11-12.

234 (a)(1) When acting under the authority of a directive, a provider or facility shall comply
235 with it to the fullest extent possible unless the requested mental health care is:

236 (A) Unavailable;

237 (B) Medically contraindicated in a manner that would result in substantial harm to the
238 declarant if administered; or

239 (C) In the opinion of the provider or facility, inconsistent with reasonable medical
240 standards to benefit the declarant or has proven ineffective in treating such declarant's
241 mental health condition.

242 (2) In the event that a part of a directive is unable to be followed due to any of the
243 circumstances set forth in paragraph (1) of this subsection, all other parts of such
244 directive shall be followed.

245 (b) If a provider or facility is unwilling at any time for one or more of the reasons set forth
246 in paragraph (1) of subsection (a) of this Code section to comply with a declarant's wishes
247 as set forth in the directive or with the decision of such declarant's agent, such provider or
248 facility shall:

249 (1) Document the reason for not following the directive in such declarant's medical
250 record; and

251 (2) Promptly notify such declarant and his or her agent, if one is appointed in the
252 directive, or otherwise such declarant's next of kin or legal guardian, of the refusal to
253 follow the directive or instructions of the agent and document the notification in such
254 declarant's medical record.

255 (c) In the event a provider or facility is unwilling at any time for one or more of the
256 reasons set forth in paragraph (1) of subsection (a) of this Code section to comply with a
257 declarant's wishes as set forth in the directive or with the decision of such declarant's agent,
258 if an agent has been appointed, then the declarant's agent, or otherwise such declarant's next
259 of kin or legal guardian, shall arrange for such declarant's transfer to another provider or
260 facility if the requested care would be delivered by that other provider or facility.

261 (d) A provider or facility unwilling at any time for one or more of the reasons set forth in
262 paragraph (1) of subsection (a) of this Code section to comply with a declarant's wishes as
263 set forth in the directive or with the decision of a declarant's mental health care agent shall
264 continue to provide reasonably necessary consultation and care in connection with the
265 pending transfer.

266 (e) A psychiatric advance directive shall not limit the involuntary examination, treatment,
267 or hospitalization of patients under Chapter 3 of this title.

268 (f) Nothing in this chapter shall be construed to require a provider or facility to provide
269 mental health care for which a declarant or a third-party payor is unable or refuses to
270 ensure payment.

271 37-11-13.

272 (a) Each provider, facility, or any other person who acts in good faith reliance on any
273 instructions contained in a directive or on any direction or decision by a mental health care
274 agent shall be protected and released to the same extent as though such person had
275 interacted directly with a capable declarant.

276 (b) Without limiting the generality of the provisions of subsection (a) of this Code section,
277 the following specific provisions shall also govern, protect, and validate the acts of a
278 mental health care agent and each such provider, facility, and any other person acting in
279 good faith reliance on such instruction, direction, or decision:

280 (1) No provider, facility, or person shall be subject to civil liability, criminal prosecution,
281 or discipline for unprofessional conduct solely for complying with any instructions
282 contained in a directive or with any direction or decision by a mental health care agent,
283 even if death or injury to the declarant ensues;

284 (2) No provider, facility, or person shall be subject to civil liability, criminal prosecution,
285 or discipline for unprofessional conduct solely for failure to comply with any instructions
286 contained in a directive or with any direction or decision by a mental health care agent,
287 so long as such provider, facility, or person informs such agent of its refusal or failure to
288 comply with the directive and continues to provide reasonably necessary consultation and
289 care in connection with a pending transfer;

290 (3) If the actions of a provider, facility, or person who fails to comply with any
291 instruction contained in a directive or with any direction or decision by a mental health
292 care agent are substantially in accord with reasonable medical standards at the time of
293 consent or refusal of mental health care and such provider, facility, or person cooperates

294 in the transfer of the declarant pursuant to subsection (d) of Code Section 37-11-12, such
295 provider, facility, or person shall not be subject to civil liability, criminal prosecution, or
296 discipline for unprofessional conduct for failure to comply with the psychiatric advance
297 directive;

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

301 (5) If the authority granted by a psychiatric advance directive is revoked under
302 Code Section 37-11-10, a provider, facility, or agent shall not be subject to criminal
303 prosecution or civil liability for acting in good faith reliance upon such psychiatric
304 advance directive unless such provider, facility, or agent had actual knowledge of the
305 revocation; and

306 (6) In the event a declarant has appointed a health care agent in accordance with Chapter
307 32 of Title 31, no provider, facility, or person who relies in good faith on the direction of
308 such health care agent shall be subject to civil liability, criminal prosecution, or discipline
309 for unprofessional conduct for complying with any direction or decision of such health
310 care agent in the event the declarant's condition is subsequently determined to be a mental
311 health care condition.

312 37-11-14.

313 A law enforcement officer who uses a declarant's valid psychiatric advance directive and
314 acts in good faith reliance on the instructions contained in such directive shall not be
315 subject to criminal prosecution or civil liability for any harm to such declarant that results
316 from a good faith effort to follow such directive's instructions.

317 37-11-15.

318 (a) The provisions of this chapter shall not apply to or invalidate a valid psychiatric
 319 advance directive executed prior to July 1, 2021.

320 (b) The use of the form set forth in Code Section 37-11-16 or a similar form after July 1,
 321 2021, in the creation of a psychiatric advance directive shall be deemed lawful and, when
 322 such form is used and it meets the requirements of this chapter, it shall be construed in
 323 accordance with the provisions of this chapter.

324 (c) Any person may use another form for a psychiatric advance directive so long as the
 325 form is substantially similar to, otherwise complies with the provisions of this chapter, and
 326 provides notice to a declarant substantially similar to that contained in the form set forth
 327 in Code Section 37-11-16. As used in this subsection, the term 'substantially similar' may
 328 include forms from other states.

329 37-11-16.

330 **'GEORGIA PSYCHIATRIC ADVANCE DIRECTIVE**

331 By: _____ Date of Birth: _____
 332 (Print Name) (Month/Day/Year)

333 *As used in this psychiatric advance directive, the term:*

334 (1) "Facility" means a hospital, skilled nursing facility, hospice, institution, home,
 335 residential or nursing facility, treatment facility, and any other facility or service which
 336 has a valid permit or provisional permit issued under Chapter 7 of Title 31 of the Official
 337 Code of Georgia Annotated or which is licensed, accredited, or approved under the laws
 338 of any state, and includes hospitals operated by the United States government or by any
 339 state or subdivision thereof.

340 (2) "Provider" means any person administering mental health care who is licensed,
 341 certified, or otherwise authorized or permitted by law to administer mental health care

342 in the ordinary course of business or the practice of a profession, including, but not
343 limited to, professional counselors, psychologists, clinical social workers, and clinical
344 nurse specialists in psychiatric and mental health; a physician; or any person acting for
345 any such authorized person.

346 This psychiatric advance directive has four parts:

347 PART ONE STATEMENT OF INTENT AND TREATMENT PREFERENCES.

348 This part allows you to state your intention for this document and state
349 your mental health treatment preferences and consent if you have been
350 determined to be incapable of making informed decisions about your
351 mental health care. PART ONE will become effective only if you have
352 been determined in the opinion of a physician or licensed psychologist
353 who has personally examined you, or in the opinion of a court, to lack
354 the capacity to understand the risks and benefits of, and the
355 alternatives to, a mental health care decision under consideration and
356 you are unable to give or communicate rational reasons for mental
357 health care decisions because of impaired thinking, impaired ability
358 to receive and evaluate information, or other cognitive disability.
359 Reasonable and appropriate efforts will be made to communicate with
360 you about your mental health treatment preferences before PART ONE
361 becomes effective. You should talk to your family and others close to
362 you about your intentions and mental health treatment preferences.

363 PART TWO MENTAL HEALTH CARE AGENT. This part allows you to choose
364 someone to make mental health care decisions for you when you
365 cannot make mental health care decisions for yourself. The person you
366 choose is called a mental health care agent. You should talk to your

367 mental health care agent about this important role.

368 PART THREE OTHER RELATED ISSUES. This part allows you to give important
369 information to people who may be involved with you during a mental
370 health care crisis.

371 PART FOUR EFFECTIVENESS AND SIGNATURES. This part requires your
372 signature and the signatures of two witnesses. You must complete
373 PART FOUR if you have filled out any other part of this form.

374 You may fill out any or all of the first three parts listed above. You must fill out PART
375 FOUR of this form in order for this form to be effective.

376 You should give a copy of this completed form to people who might need it, such as your
377 mental health care agent, your family, and your physician. Keep a copy of this completed
378 form at home in a place where it can easily be found if it is needed. Review this completed
379 form periodically to make sure it still reflects your preferences. If your preferences
380 change, complete a new psychiatric advance directive.

381 Using this form of psychiatric advance directive is completely optional. Other forms of
382 psychiatric advance directives may be used in Georgia.

383 You may revoke this completed form at any time that you are capable of making informed
384 decisions about your mental health care. If you choose to revoke this form, you should
385 communicate your revocation to your providers, your agents, and any other person to
386 whom you have given a copy of this form. This completed form will supersede any advance
387 directive for health care, durable power of attorney for health care, health care proxy, or

388 living will that you have completed before completing this form to the extent that such other
 389 documents relate to mental health care and are inconsistent with the information contained
 390 in this form.

391 <u>PART ONE: STATEMENT OF INTENT</u> 392 <u>AND TREATMENT PREFERENCES</u>
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393 [PART ONE will become effective only if you have been determined in the opinion of a
 394 physician or licensed psychologist who has personally examined you, or in the opinion of
 395 a court, to lack the capacity to understand the risks and benefits of, and the alternatives to,
 396 a mental health care decision under consideration and you are unable to give or
 397 communicate rational reasons for mental health care decisions because of impaired
 398 thinking, impaired ability to receive and evaluate information, or other cognitive disability.
 399 Reasonable and appropriate efforts will be made to communicate with you about your
 400 mental health treatment preferences before PART ONE becomes effective. PART ONE will
 401 be effective even if PARTS TWO or THREE are not completed. If you have not selected a
 402 mental health care agent in PART TWO, or if your mental health care agent is not
 403 available, then PART ONE will communicate your treatment preferences to your providers
 404 or a facility providing care to you. If you have selected a mental health care agent in
 405 PART TWO, then your mental health care agent will have the authority to make health care
 406 decisions for you regarding matters guided by your mental health treatment preferences
 407 and other factors described in this PART.]

408 **(1) STATEMENT OF INTENT**

409 I, (your name) _____, being of sound mind, willfully and
 410 voluntarily make this psychiatric advance directive as a means of expressing in advance
 411 my informed choices and consent regarding my mental health care in the event I become

412 incapable of making informed decisions on my own behalf. I understand this document
413 becomes effective if it is determined by a physician or licensed psychologist who has
414 personally examined me, or in the opinion of a court, that I lack the capacity to
415 understand the risks, benefits, and alternatives to a mental health care treatment decision
416 under consideration and I am unable to give or communicate rational reasons for my
417 mental health care treatment decisions because of impaired thinking, impaired ability to
418 receive and evaluate information, or other cognitive disability.

419 If I am deemed incapable of making mental health care decisions, I intend for this
420 document to constitute my advance authorization and consent, based on my past
421 experiences with my illness and knowledge gained from those experiences, for treatment
422 that is medically indicated and consistent with the preferences I have expressed in this
423 document.

424 I understand this document continues in operation only during my incapacity to make
425 mental health care decisions. I understand I may revoke this document only during
426 periods when I am mentally capable.

427 I intend for this psychiatric advance directive to take precedence over any advance
428 directive for health care executed pursuant to Chapter 32 of Title 31 of the Official Code
429 of Georgia Annotated, durable power of attorney for health care creating a health care
430 agency under the former Chapter 36 of Title 31 of the Official Code of Georgia
431 Annotated, as such chapter existed on and before June 30, 2007, health care proxy, or
432 living will that I have executed prior to executing this form to the extent that such other
433 documents relate to mental health care and are inconsistent with this executed document.

434 In the event that a decision maker is appointed by a court to make mental health care
435 decisions for me, I intend this document to take precedence over all other means of
436 determining my intent while I was competent.

437 It is my intent that a person or facility involved in my care shall not be civilly liable or
438 criminally prosecuted for honoring my wishes as expressed in this document or for
439 following the directions of my agent.

440 **(2) INFORMATION REGARDING MY SYMPTOMS**

441 The following are symptoms or behaviors I typically exhibit when escalating toward a
442 mental health crisis. If I exhibit any of these symptoms or behaviors, an evaluation is
443 needed regarding whether or not I am incapable of making mental health care decisions:

444 _____
445 _____
446 _____

447 The following may cause me to experience a mental health crisis or to make my
448 symptoms worse:

449 _____
450 _____
451 _____

452 The following techniques may be helpful in de-escalating my crisis:

453 _____
454 _____
455 _____

456 When I exhibit the following behaviors, I would like to be evaluated to determine
457 whether or not I have regained the capacity to make my mental health care decisions:

458 _____
 459 _____
 460 _____

461 **(3) PREFERRED CLINICIANS**

462 The names of my doctors, therapists, pharmacists, and other mental health care
 463 professionals and their telephone numbers are:

464 Name and telephone numbers:
 465 _____
 466 _____
 467 _____

468 I prefer and consent to treatment from the following clinicians:

469 Names:
 470 _____
 471 _____
 472 _____

473 I refuse to be treated by the following clinicians:

474 Names:
 475 _____
 476 _____
 477 _____

478 **(4) TREATMENT INSTRUCTIONS**

479 **Medications**

480 I am currently using and consent to continue to use the following medications (include
 481 all medications, whether for mental health care treatment or general health care
 482 treatment):

483 _____
 484 _____
 485 _____

486 If additional medications become necessary, I prefer and consent to take the following
 487 medications:

488 _____
 489 _____
 490 _____

491 I cannot tolerate the following medications because:

492 _____
 493 _____
 494 _____

495 I am allergic to the following medications:

496 _____
 497 _____
 498 _____

499 If my preferred medications cannot be given and I have not appointed an agent in PART
 500 TWO to make an alternative decision for me, I want my treating physician to choose an
 501 alternative medication that would best meet my mental health needs, subject to any
 502 limitations I have expressed in my treating instructions above. (Check "yes" if you agree
 503 with this statement and "no" if you disagree with this statement.) Yes _____ No _____

504 In the event I need to have medication administered, I would prefer and consent to the
 505 following methods (Check "yes" or "no" and list a reason for your request if you have
 506 one.):

507 Medication in pill form: Yes _____ No _____

508 Reason: _____

509 Liquid medication: _____ Yes _____ No _____

510 Reason: _____

511 Medication by injection: _____ Yes _____ No _____

512 Reason: _____

513 Covert medication

514 (without my knowledge in drink or food): _____ Yes _____ No _____

515 Reason: _____

516 **Hospitalization is Not My First Choice**

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

519 _____

520 _____

521 _____

522 If I need outpatient therapy, I prefer and consent to it being provided by:

523 _____

524 _____

525 _____

526 Additional instructions that may help me avoid a hospitalization:

527 _____

528 _____

529 _____

530 **Treatment Facilities**

531 If it becomes necessary for me to be hospitalized, I would prefer and consent to being
532 treated at the following facilities:

533 _____
 534 _____
 535 _____

536 I refuse to be treated at the following facilities:

537 _____
 538 _____
 539 _____

540 Reason(s) for wishing to avoid the above facilities:

541 _____
 542 _____
 543 _____

544 I generally react to being hospitalized as follows:

545 _____
 546 _____
 547 _____

548 Staff at a facility can help me by doing the following:

549 _____
 550 _____
 551 _____

552 I give permission for the following people to visit me:

553 _____
 554 _____
 555 _____

556 **Additional Interventions** *(Please place your initials in the blanks)*

557 I prefer the following interventions as indicated by my initials and consent to any
 558 intervention where I have initialed next to "yes."

584
585
586

587

PART TWO: MENTAL HEALTH CARE AGENT

588
589
590
591
592
593
594
595
596
597
598
599
600
601

[PART ONE will be effective even if PART TWO is not completed. If you do not wish to appoint an agent, do not complete PART TWO. A provider who is directly involved in your health care or any employee of that provider may not serve as your mental health care agent unless such employee is your family member, friend, or associate and is not directly involved in your health care. An employee of the Department of Behavioral Health and Developmental Disabilities or of a local public mental health agency or of any organization that contracts with a local public mental health authority may not serve as your mental health care agent unless such person is your family member, friend, or associate and is not directly involved in your health care. If you are married, a future divorce or annulment of your marriage will revoke the selection of your current spouse as your mental health care agent unless you indicate otherwise in Section (10) of this PART. If you are not married, a future marriage will revoke the selection of your mental health care agent unless the person you selected as your mental health care agent is your new spouse.]

602

(6) MENTAL HEALTH CARE AGENT

603
604

I select the following person as my mental health care agent to make mental health care decisions for me:

605
606
607
608

Name: _____
Address: _____
Telephone Numbers: _____
(Home, Work, and Mobile)

609 Agent's Acceptance: I have read this form, and I certify that I do not, have not, and will
 610 not provide mental health care and treatment for: (your name)
 611 I accept the designation as agent for: (your name)
 612 (Agent's signature and date)

613 **(7) BACK-UP MENTAL HEALTH CARE AGENT**

614 [This section is optional. PART TWO will be effective even if this section is left blank.]

615 If my mental health care agent cannot be contacted in a reasonable time period and
 616 cannot be located with reasonable efforts or for any reason my mental health care agent
 617 is unavailable or unable or unwilling to act as my mental health care agent, then I select
 618 the following, each to act successively in the order named, as my back-up mental health
 619 care agent(s):

620 Name:
 621 Address:
 622 Telephone Numbers:
 623 (Home, Work, and Mobile)

624 Back-up Agent's Acceptance: I have read this form, and I certify that I do not, have
 625 not, and will not provide mental health care and treatment for: (your name)
 626 _____

627 I accept the designation as agent for: (your name)
 628 (Back-up agent's signature and date)

629 Name:
 630 Address:
 631 Telephone Numbers:
 632 (Home, Work, and Mobile)

633 Back-up Agent's Acceptance: I have read this form, and I certify that I do not, have
 634 not, and will not provide mental health care and treatment for: (your name)

635 _____

636 I accept the designation as agent for: (your name) _____

637 (Back-up agent's signature and date) _____

638 **(8) GENERAL POWERS OF MENTAL HEALTH CARE AGENT**

639 My mental health care agent will make mental health care decisions for me when I have
 640 been determined in the opinion of a physician or licensed psychologist who has
 641 personally examined me, or in the opinion of a court, to lack the capacity to understand
 642 the risks and benefits of, and the alternatives to, a mental health care treatment decision
 643 under consideration and I am unable to give or communicate rational reasons for my
 644 mental health care decisions because of impaired thinking, impaired ability to receive and
 645 evaluate information, or other cognitive disability.

646 My mental health care agent will have the same authority to make any mental health care
 647 decision that I could make. My mental health care agent's authority includes, for
 648 example, the power to:

- 649 •Request and consent to admission or discharge from any facility;
- 650 •Request, consent to, authorize, or withdraw consent to any type of provider or mental
 651 health care that is consistent with my instructions in PART ONE of this form and
 652 subject to the limitations set forth in Section (4) of PART ONE; and
- 653 •Contract for any health care facility or service for me, and to obligate me to pay for
 654 these services (and my mental health care agent will not be financially liable for any
 655 services or care contracted for me or on my behalf).

656 My mental health care agent will be my personal representative for all purposes of federal
657 or state law related to privacy of medical records (including the Health Insurance
658 Portability and Accountability Act of 1996) and will have the same access to my medical
659 records that I have and can disclose the contents of my medical records to others for my
660 ongoing mental health care.

661 My mental health care agent may accompany me in an ambulance or air ambulance if in
662 the opinion of the ambulance personnel protocol permits a passenger, and my mental
663 health care agent may visit or consult with me in person while I am in a facility if its
664 protocol permits visitation.

665 My mental health care agent may present a copy of this psychiatric advance directive in
666 lieu of the original, and the copy will have the same meaning and effect as the original.

667 I understand that under Georgia law:

- 668 •My mental health care agent may refuse to act as my mental health care agent; and
- 669 •A court can take away the powers of my mental health care agent if it finds that my
670 mental health care agent is not acting in accordance with this directive.

671 **(9) GUIDANCE FOR MENTAL HEALTH CARE AGENT**

672 In the event my directive is being used, my agent should first look at my instructions as
673 expressed in PART ONE. If a situation occurs for which I have not expressed a
674 preference, or in the event my preference is not available, my mental health care agent
675 should think about what action would be consistent with past conversations we have had,
676 my treatment preferences as expressed in PART ONE, my religious and other beliefs and
677 values, and how I have handled medical and other important issues in the past. If what
678 I would decide is still unclear, then my mental health care agent should make decisions

679 for me that my mental health care agent believes are in my best interests, considering the
680 benefits, burdens, and risks of my current circumstances and treatment options.

681 I impose the following limitations on my agent's authority to act on my behalf:

682 _____
683 _____
684 _____

685 **(10) WHEN SPOUSE IS MENTAL HEALTH CARE AGENT AND THERE HAS**
686 **BEEN A DIVORCE OR ANNULMENT OF OUR MARRIAGE**

687 *[Initial if you agree with this statement; leave blank if you do not.]*

688 _____ I desire the person I have named as my agent, who is now my spouse, to
689 remain as my agent even if we become divorced or our marriage is annulled.

690

<u>PART THREE: OTHER RELATED ISSUES</u>
--

691 *[PART THREE is optional. This psychiatric advance directive will be effective even if*
692 *PART THREE is left blank.]*

693 **(11) GUIDANCE FOR LAW ENFORCEMENT**

694 I typically react to law enforcement in the following ways:

695 _____
696 _____
697 _____

698 The following person(s) may be helpful in the event of law enforcement involvement:

699 Name: _____ Telephone Number: _____

700 Relationship: _____

701 Name: _____ Telephone Number: _____

702 Relationship: _____

703 **(12) HELP FROM OTHERS**

704 The following people are part of my support system (child care, pet care, getting my mail,
705 paying my bills, etc.) and should be contacted in the event of a crisis:

706 Name: _____ Telephone Number: _____

707 Responsibility: _____

708 Name: _____ Telephone Number: _____

709 Responsibility: _____

710 Name: _____ Telephone Number: _____

711 Responsibility: _____

712

<u>PART FOUR: EFFECTIVENESS AND SIGNATURES</u>

713 This psychiatric advance directive will become effective only if I have been determined
714 in the opinion of a physician or licensed psychologist who has personally examined me,
715 or in the opinion of a court, to lack the capacity to understand the risks and benefits of,
716 and the alternatives to, a mental health care decision under consideration and I am unable
717 to give or communicate rational reasons for my mental health care decisions because of
718 impaired thinking, impaired ability to receive and evaluate information, or other cognitive
719 disability.

720 This form revokes any psychiatric advance directive that I have executed before this date.
721 To the extent this form is in conflict or is inconsistent with any advance directive for
722 health care, durable power of attorney for health care, health care proxy, or living will
723 executed by me at any time, this form shall control with respect to my mental health care.

724 Unless I have initialed below and have provided alternative future dates or events, this
725 psychiatric advance directive will become effective at the time I sign it and will remain
726 effective until my death.

727 _____ (Initials) This psychiatric advance directive will become effective on or
728 upon (date) _____ and will terminate on or upon (date) _____.

729 [You must sign and date or acknowledge signing and dating this form in the presence of
730 two witnesses.

731 Both witnesses must be of sound mind and must be at least 18 years of age, but the
732 witnesses do not have to be together or present with you when you sign this form.

733 A witness:

734 •Cannot be a person who was selected to be your mental health care agent or back-up
735 mental health care agent in PART TWO;

736 •Cannot be a provider who is providing mental health care to you at the time you
737 execute this directive or an employee of such provider unless the witness is your family
738 member, friend, or associate and is not directly involved in your mental health care;
739 and

740 •Cannot be an employee of the Department of Behavioral Health and Developmental
741 Disabilities or of a local public mental health agency or of any organization that
742 contracts with a local public mental health authority unless the witness is your family
743 member, friend, or associate and is not directly involved in your mental health care.]

744 By signing below, I state that I am of sound mind and capable of making this psychiatric
745 advance directive and that I understand its purpose and effect.

746 _____
747 (Signature of Declarant)

(Date)

748 The declarant signed this form in my presence or acknowledged signing this form to me.
 749 Based upon my personal observation, the declarant appeared to be of sound mind and
 750 mentally capable of making this psychiatric advance directive and signed this form
 751 willingly and voluntarily.

752 _____
 753 (Signature of First Witness) _____ (Date)

754 Print Name: _____

755 Address: _____

756 _____
 757 (Signature of Second Witness) _____ (Date)

758 Print Name: _____

759 Address: _____

760 [This form does not need to be notarized.]"

761 **PART II**
 762 **SECTION 2-1.**

763 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
 764 amended in Code Section 16-5-5, relating to assisted suicide and notification of licensing
 765 board regarding violation, by revising paragraphs (3) and (4) of subsection (c) as follows:

766 "(3) Any person prescribing, dispensing, or administering medications or medical
 767 procedures pursuant to, without limitation, a living will, a durable power of attorney for
 768 health care, an advance directive for health care, a psychiatric advance directive, a
 769 Physician Orders for Life-Sustaining Treatment form pursuant to Code Section 31-1-14,

770 or a consent pursuant to Code Section 29-4-18 or 31-9-2 when such actions are calculated
771 or intended to relieve or prevent a patient's pain or discomfort but are not calculated or
772 intended to cause such patient's death, even if the medication or medical procedure may
773 have the effect of hastening or increasing the risk of death;

774 (4) Any person discontinuing, withholding, or withdrawing medications, medical
775 procedures, nourishment, or hydration pursuant to, without limitation, a living will, a
776 durable power of attorney for health care, an advance directive for health care, a
777 psychiatric advance directive, a Physician Orders for Life-Sustaining Treatment form
778 pursuant to Code Section 31-1-14, a consent pursuant to Code Section 29-4-18 or 31-9-2,
779 or a written order not to resuscitate; or"

780 **SECTION 2-2.**

781 Said title is further amended in Code Section 16-5-102.1, relating to trafficking of a disabled
782 adult, elder person, or resident, by revising subsection (f) as follows:

783 "(f) This Code section shall not apply to a physician nor any person acting under a
784 physician's direction nor to a hospital, hospice, or long-term care facility, nor any agent or
785 employee thereof who is in good faith acting within the scope of his or her employment or
786 agency or who is acting in good faith in accordance with a living will, a durable power of
787 attorney for health care, an advance directive for health care, a psychiatric advance
788 directive, a Physician Orders for Life-Sustaining Treatment form pursuant to Code Section
789 31-1-14, an order not to resuscitate, or the instructions of the patient or the patient's lawful
790 surrogate decision maker."

791 **SECTION 2-3.**

792 Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is
793 amended in Code Section 29-4-10, relating to petition for appointment of guardian and
794 requirements for petition, by revising paragraph (6) of subsection (b) as follows:

795 "(6) Whether, to the petitioner's knowledge, there exists any living will, durable power
 796 of attorney for health care, advance directive for health care, psychiatric advance
 797 directive, order relating to cardiopulmonary resuscitation, or other instrument that deals
 798 with the management of the person of the proposed ward in the event of incapacity and
 799 the name and address of any fiduciary or agent named in the instrument;"

800 **SECTION 2-4.**

801 Said title is further amended in Code Section 29-4-21, relating to rights and privileges
 802 removed from ward upon appointment of guardian, by revising subsection (b) as follows:

803 "(b) The mere appointment of a guardian does not revoke the powers of an agent who was
 804 previously appointed by the ward to act as an agent under a durable power of attorney for
 805 health care, a ~~or~~ health care agent under an advance directive for health care, or a mental
 806 health care agent under a psychiatric advance directive."

807 **SECTION 2-5.**

808 Said title is further amended in Code Section 29-5-21, relating to rights and powers removed
 809 from ward upon appointment of conservator, by revising subsection (b) as follows:

810 "(b) The mere appointment of a conservator does not revoke the powers of an agent who
 811 was previously appointed by the ward to act as the ward's agent under a durable power of
 812 attorney for health care, ~~or~~ health care agent under an advance directive for health care, or
 813 mental health care agent under a psychiatric advance directive."

814 **SECTION 2-6.**

815 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in Code
 816 Section 31-8-55, relating to entry and investigative authority, cooperation of government
 817 agencies, and communication with residents, by revising subsection (b) as follows:

818 "(b) The state ombudsman or community ombudsman shall have the authority to enter any
819 long-term care facility and shall use his or her best efforts to enter such facility during
820 normal visiting hours. Upon entering the long-term care facility, the ombudsman shall
821 notify the administrator or, in the absence of the administrator, the person in charge of the
822 facility, before speaking to any residents. After notifying the administrator or the person
823 in charge of the facility, the ombudsman may communicate privately and confidentially
824 with residents of the facility, individually or in groups. The ombudsman shall have access
825 to the medical and social records of any resident if:

826 (1) The ombudsman has the permission of the resident or the legal representative or
827 guardian of the resident;

828 (2) The resident is unable to consent to the review and has no legal representative or
829 guardian; or

830 (3) There is a guardian of the person of the resident and that guardian refuses to permit
831 access to the records necessary to investigate a complaint, and:

832 (A) There is reasonable cause to believe that the guardian is not acting in the best
833 interests of the resident; and

834 (B) A community ombudsman obtains the approval of the state ombudsman.

835 As used in this Code section, the term 'legal representative' means an agent under a valid
836 power of attorney, provided that the agent is acting within the scope of his or her agency;
837 an agent under a durable power of attorney for health care or health care agent under an
838 advance directive for health care; a mental health care agent under a psychiatric advance
839 directive; or an executor, executrix, administrator, or administratrix of the estate of a
840 deceased resident. The ombudsman shall have the authority to inspect the physical plant
841 and have access to the administrative records, policies, and documents of the facility to
842 which the residents have or the general public has access. Entry and investigation provided
843 by this Code section shall be conducted in a manner which will not significantly disrupt the
844 provision of nursing or other care to residents."

845 **SECTION 2-7.**

846 Said title is further amended in Code Section 31-9-2, relating to persons authorized to
847 consent to surgical or medical treatment, by revising paragraphs (1) and (1.1) of subsection
848 (a) as follows:

849 "(1) Any adult, for himself or herself, whether by living will, advance directive for health
850 care, psychiatric advance directive under Chapter 11 of Title 37, or otherwise;

851 (1.1) Any person authorized to give such consent for the adult under an advance directive
852 for health care or durable power of attorney for health care under Chapter 32 of this title
853 or psychiatric advance directive under Chapter 11 of Title 37;"

854 **SECTION 2-8.**

855 Said title is further amended in Code Section 31-32-2, relating to definitions relative to the
856 "Georgia Advance Directive for Health Care Act," by adding new paragraphs to read as
857 follows:

858 "(10.1) 'Mental health care' shall have the same meaning as in Code Section 37-11-3.

859 (10.2) 'Mental health care agent' means an agent appointed under a psychiatric advance
860 directive in accordance with Chapter 11 of Title 37."

861 "(12.1) 'Psychiatric advance directive' means a written document voluntarily executed
862 by an individual in accordance with the requirements of Code Section 37-11-9."

863 **SECTION 2-9.**

864 Said title is further amended in Code Section 31-32-4, relating to the advance directive for
865 health care form, by revising paragraph (3) of PART ONE of the form as follows:

866 **"(3) GENERAL POWERS OF HEALTH CARE AGENT**

867 My health care agent will make health care decisions for me when I am unable to
868 communicate my health care decisions or I choose to have my health care agent
869 communicate my health care decisions.

870 My health care agent will have the same authority to make any health care decision that
871 I could make. My health care agent's authority includes, for example, the power to:

- 872 •Admit me to or discharge me ~~Request and consent to admission or discharge~~ from any
873 hospital, skilled nursing facility, hospice, or other health care facility or service;
874 •Request, consent to, withhold, or withdraw any type of health care; and
875 •Contract for any health care facility or service for me, and to obligate me to pay for
876 these services (and my health care agent will not be financially liable for any services
877 or care contracted for me or on my behalf).

878 My health care agent will be my personal representative for all purposes of federal or
879 state law related to privacy of medical records (including the Health Insurance Portability
880 and Accountability Act of 1996) and will have the same access to my medical records
881 that I have and can disclose the contents of my medical records to others for my ongoing
882 health care.

883 My health care agent may accompany me in an ambulance or air ambulance if in the
884 opinion of the ambulance personnel protocol permits a passenger, and my health care
885 agent may visit or consult with me in person while I am in a hospital, skilled nursing
886 facility, hospice, or other health care facility or service if its protocol permits visitation.

887 My health care agent may present a copy of this advance directive for health care in lieu
888 of the original, and the copy will have the same meaning and effect as the original.

889 I understand that under Georgia law:

- 890 •My health care agent may refuse to act as my health care agent;
891 •A court can take away the powers of my health care agent if it finds that my health
892 care agent is not acting properly; and

893 •My health care agent does not have the power to make health care decisions for me
894 regarding ~~psychosurgery, sterilization, or treatment~~ or involuntary hospitalization, or
895 involuntary treatment for mental or emotional illness, developmental disability, or
896 addictive disease.

897 • My health care agent does not have the power to make health care decisions that are
898 otherwise covered under a psychiatric advance directive that I have executed pursuant
899 to Chapter 11 of Title 37 of the Official Code of Georgia Annotated, including
900 decisions related to treatment or hospitalization for mental or emotional illness,
901 developmental disability, or addictive disease."

902 **SECTION 2-10.**

903 Said title is further amended in Code Section 31-32-7, relating to duties and responsibilities
904 of health care agents, by revising paragraph (1) of subsection (e) and by adding a new
905 subsection to read as follows:

906 "(1) The health care agent is authorized to consent to and authorize or refuse, or to
907 withhold or withdraw consent to, any and all types of medical care, treatment, or
908 procedures relating to the physical or mental health of the declarant, including any
909 medication program, surgical procedures, life-sustaining procedures, or provision of
910 nourishment or hydration for the declarant, but not including ~~psychosurgery, sterilization;~~
911 or involuntary hospitalization or involuntary treatment covered by Title 37;"

912 "(g) With respect to mental health care, the duties and responsibilities of a health care
913 agent under this chapter shall be subordinate to the duties and responsibilities of a mental
914 health care agent under Chapter 11 of Title 37 and subject to the terms of a psychiatric
915 advance directive executed by the declarant before, simultaneously with, or after the
916 advance directive for health care under which the health care agent is acting."

917 **SECTION 2-11.**

918 Said title is further amended in Code Section 31-32-10, relating to immunity from liability
919 or disciplinary action, by revising subsection (a) by deleting "and" at the end of paragraph
920 (4), by replacing the period with "; and" at the end of paragraph (5), and by adding a new
921 paragraph to read as follows:

922 "(6) In the event a declarant has appointed a mental health care agent, no health care
923 provider, health care facility, or person who relies in good faith on the direction of such
924 mental health care agent shall be subject to civil liability, criminal prosecution, or
925 discipline for unprofessional conduct for complying with any direction or decision of
926 such mental health care agent in the event the declarant's condition is subsequently
927 determined to be a health care condition."

928 **SECTION 2-12.**

929 Said title is further amended in Code Section 31-32-14, relating to effect of chapter on other
930 legal rights and duties, by adding a new subsection to read as follows:

931 "(g) With respect to mental health care, nothing in this chapter shall supersede the duties
932 and responsibilities of a mental health care agent under Chapter 11 of Title 37 or the terms
933 of a psychiatric advance directive executed by the declarant before, simultaneously with,
934 or after the advance directive for health care under which the health care agent is acting."

935 **SECTION 2-13.**

936 Said title is further amended in Code Section 31-33-2, relating to furnishing copy of records
937 to patient, provider, or other authorized person, by revising paragraph (2) of subsection (a)
938 as follows:

939 "(2) Upon written request from the patient or a person authorized to have access to the
940 patient's record under an advance directive for health care, a psychiatric advance
941 directive, or a durable power of attorney for health care for such patient, the provider

942 having custody and control of the patient's record shall furnish a complete and current
943 copy of that record, in accordance with the provisions of this Code section. If the patient
944 is deceased, such request may be made by the following persons:

945 (A) The executor, administrator, or temporary administrator for the decedent's estate
946 if such person has been appointed;

947 (B) If an executor, administrator, or temporary administrator for the decedent's estate
948 has not been appointed, by the surviving spouse;

949 (C) If there is no surviving spouse, by any surviving child; and

950 (D) If there is no surviving child, by any parent."

951 **SECTION 2-14.**

952 Said title is further amended in Code Section 31-36A-3, relating to definitions relative to the
953 "Temporary Health Care Placement Decision Maker for an Adult Act," by adding a new
954 paragraph to read as follows:

955 "(1.1) 'Psychiatric advance directive' means a written document voluntarily executed by
956 an individual in accordance with the requirements of Code Section 37-11-9."

957 **SECTION 2-15.**

958 Said title is further amended in Code Section 31-36A-6, relating to persons authorized to
959 consent, expiration of authorization, limitations on authority to consent, effect on other laws,
960 and immunity from liability or disciplinary action, by revising paragraph (2) of subsection
961 (a) as follows:

962 "(2) Any person authorized to give such consent for the adult under an advance directive
963 for health care, psychiatric advance directive, or durable power of attorney for health care
964 under Chapter 32 of this title;"

965 **SECTION 2-16.**

966 Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended in
967 Code Section 37-1-1, relating to definitions relative to governing and regulation of mental
968 health, by adding new paragraphs to read as follows:

969 "(11.1) 'Mental health care agent' means an agent appointed under a psychiatric advance
970 directive in accordance with Chapter 11 of Title 37."

971 "(16.1) 'Psychiatric advance directive' means a written document voluntarily executed
972 by an individual in accordance with the requirements of Code Section 37-11-9."

973 **SECTION 2-17.**

974 Said title is further amended in Code Section 37-1-20, relating to obligations of the
975 Department of Behavioral Health and Developmental Disabilities, by revising paragraph (18)
976 as follows:

977 "(18) Classify host homes for persons whose services are financially supported, in whole
978 or in part, by funds authorized through the department. As used in this Code section, the
979 term 'host home' means a private residence in a residential area in which the occupant
980 owner or lessee provides housing and provides or arranges for the provision of food, one
981 or more personal services, supports, care, or treatment exclusively for one or two persons
982 who are not related to the occupant owner or lessee by blood or marriage. A host home
983 shall be occupied by the owner or lessee, who shall not be an employee of the same
984 community provider which provides the host home services by contract with the
985 department. The department shall approve and enter into agreements with community
986 providers which, in turn, contract with host homes. The occupant owner or lessee shall
987 not be the guardian of any person served or of their property, ~~nor~~ the agent in such
988 person's advance directive for health care, nor the mental health care agent in such
989 person's psychiatric advance directive. The placement determination for each person
990 placed in a host home shall be made according to such person's choice as well as the

991 individual needs of such person in accordance with the requirements of Code Section
992 37-3-162, 37-4-122, or 37-7-162, as applicable to such person;"

993 **SECTION 2-18.**

994 Said title is further amended by revising Code Section 37-3-20, relating to admission of
995 voluntary patients, consent of parent or guardian to treatment, and giving notice of rights to
996 patient at time of admission, as follows:

997 "37-3-20.

998 (a) The chief medical officer of any facility may receive for observation and diagnosis any
999 patient 12 years of age or older making application therefor, any patient under 18 years of
1000 age for whom such application is made by his or her parent or guardian, any patient who
1001 has a psychiatric advance directive and for whom such application is made by his or her
1002 mental health care agent, and any patient who has been declared legally incompetent and
1003 for whom such application is made by his or her guardian. If found to show evidence of
1004 mental illness and to be suitable for treatment, such person may be given care and
1005 treatment at such facility; and such person may be detained by such facility until
1006 discharged pursuant to Code Section 37-3-21 or 37-3-22. The parents or guardian of a
1007 minor child must give written consent to such treatment. An individualized service plan
1008 shall be developed for such person as soon as possible.

1009 (b) Any individual voluntarily admitted to a facility under this Code section shall be given
1010 notice of his or her rights under this chapter at the time of his admission."

1011 **SECTION 2-19.**

1012 Said title is further amended in Code Section 37-2-30, relating to definitions relative to the
1013 Office of Disability Services Ombudsman, by revising paragraph (7) and by adding a new
1014 paragraph, to read as follows:

1015 "(7) 'Health care agent' means an agent under a durable power of attorney for health care,
1016 a or health care agent under an advance directive for health care, or a mental health care
1017 agent under a psychiatric advance directive."

1018 "(9.1) 'Psychiatric advance directive' means a written document voluntarily executed by
1019 a patient in accordance with the requirements of Code Section 37-11-9."

1020 **SECTION 2-20.**

1021 Said title is further amended by revising Code Section 37-3-147, relating to representatives
1022 and guardians ad litem, notification provisions, and duration and scope of guardianship ad
1023 litem, as follows:

1024 "37-3-147.

1025 (a) At the time a person who has mental illness is admitted to any facility under this
1026 chapter or as soon thereafter as reasonably possible given the person's condition or mental
1027 state at the time of admission, such facility shall use diligent efforts to secure the names
1028 and addresses of at least two representatives, which names and addresses shall be entered
1029 in the person's clinical record.

1030 (b) The patient may designate one representative; the second representative or, in the
1031 absence of designation of one representative by the patient, both representatives shall be
1032 selected by the facility. If the facility is to select both representatives, it must make one
1033 selection from among the following persons in the order of listing: the patient's mental
1034 health care agent, legal guardian, spouse, adult child, parent, attorney, adult next of kin, or
1035 adult friend, provided that, in the case of a patient whose representative or representatives
1036 have been appointed by the court under Code Section 37-3-62, the facility shall not select
1037 a different representative. The second representative shall also be selected from the above
1038 list but without regard to the order of listing, provided that the second representative shall
1039 not be the person who filed the petition to have the patient admitted to the facility.

1040 (c) If the facility is unable to secure at least two representatives after diligent search or if
1041 the department is the guardian of the patient, that fact shall be entered in the patient's
1042 clinical record and the facility shall apply to the court in the county of the patient's
1043 residence for the appointment of a guardian ad litem, which guardian ad litem shall not be
1044 the department. On application of any person or on its own motion, the court may also
1045 appoint a guardian ad litem for a patient for whom two representatives have been named
1046 whenever the appointment of a guardian ad litem is deemed necessary for protection of the
1047 patient's rights. Such guardian ad litem shall also act as representative of the patient and
1048 shall have the powers granted to representatives by this chapter.

1049 (d) At any time notice is required by this chapter to be given to the patient's
1050 representatives, such notice shall be served on the representatives designated under this
1051 Code section. The patient's guardian ad litem, if any, shall likewise be served. Unless
1052 otherwise provided, notice may be served in person or by first-class mail. When notice is
1053 served by mail, a record shall be made of the date of mailing and shall be placed in the
1054 patient's clinical record. Service shall be completed upon mailing.

1055 (e) At any time notice is required by this chapter to be given to the patient, the date on
1056 which notice is given shall be entered on the patient's clinical record. If the patient is
1057 unable to comprehend the written notice, a reasonable effort shall be made to explain the
1058 notice to him or her.

1059 (f) At the time a court enters an order pursuant to this chapter, such order and notice of the
1060 date of entry of the order shall be served on the patient and his or her representatives as
1061 provided in subsection (d) of this Code section.

1062 (g) Notice of an involuntary patient's admission to a facility shall be given to his or her
1063 representatives in writing. If such involuntary admission is to an emergency receiving
1064 facility, notice shall also be given by that facility to the patient's representatives by
1065 telephone or in person as soon as possible.

1066 (h) In every instance in which a court shall appoint a guardian ad litem for any person
1067 pursuant to the terms of this chapter, such guardianship shall be for the limited purpose
1068 stated in the order of the court and shall expire automatically after 90 days or after a lesser
1069 time stated in the order. The responsibility of the guardian ad litem shall not extend
1070 beyond the specific purpose of the appointment."

1071 **SECTION 2-21.**

1072 Said title is further amended by revising Code Section 37-4-107, relating to appointment of
1073 client representatives and guardians ad litem, notification provisions, and duration and scope
1074 of guardianship ad litem, as follows:

1075 "37-4-107.

1076 (a) At the time a client is admitted to any facility under this chapter, that facility shall
1077 make diligent efforts to secure the names and addresses of at least two representatives,
1078 which names and addresses shall be entered in the client's clinical record.

1079 (b) The client may designate one representative; the second representative or, in the
1080 absence of designation of one representative by the client, both representatives shall be
1081 selected by the facility. If the facility is to select both representatives, it must make one
1082 selection from among the following persons in the order of listing: the client's mental
1083 health care agent, legal guardian, spouse, adult child, parent, attorney, adult next of kin, or
1084 adult friend. The second representative shall also be selected from the above list but
1085 without regard to the order of listing, provided that the second representative shall not be
1086 the person who filed the petition seeking an order for the client to receive services from the
1087 department.

1088 (c) If the facility is unable to secure at least two representatives after diligent search or if
1089 the department is the guardian of the client, that fact shall be entered in the client's clinical
1090 record and the facility shall apply to the court in the county of the client's residence for the
1091 appointment of a guardian ad litem, which guardian ad litem shall not be the department.

1092 On application of any person or on its own motion, the court may also appoint a guardian
1093 ad litem for a client for whom two representatives have been named whenever the
1094 appointment of a guardian ad litem is deemed necessary for protection of the client's rights.
1095 Such guardian ad litem shall act as representative of the client on whom notice is to be
1096 served under this chapter and shall have the powers granted to representatives by this
1097 chapter.

1098 (d) At any time notice is required by this chapter to be given to the client's representatives,
1099 such notice shall be served on the representatives designated under this Code section. The
1100 client's guardian ad litem, if any, shall likewise be served. Unless otherwise provided,
1101 notice may be served in person or by first-class mail. When notice is served by mail, a
1102 record shall be made of the date of mailing and shall be placed in the client's clinical
1103 record. Service shall be completed upon mailing.

1104 (e) At any time notice is required by this chapter to be given to the client, the date on
1105 which notice is given shall be entered on the client's clinical record. If the client is unable
1106 to comprehend a written notice, a reasonable effort shall be made to explain the notice to
1107 him or her.

1108 (f) At the time a court enters an order pursuant to this chapter, such order and notice of the
1109 date of entry of the order shall be served on the client and his or her representatives as
1110 provided in subsection (d) of this Code section.

1111 (g) Notice of a client's admission to a facility shall be given to his or her representatives
1112 in writing.

1113 (h) In every instance in which a court shall appoint a guardian ad litem for any person
1114 pursuant to the terms of this chapter, such guardianship shall be for the limited purpose
1115 stated in the order of the court and shall expire automatically after 90 days or after a lesser
1116 time stated in the order. The responsibility of the guardian ad litem shall not extend
1117 beyond the specific purpose of the appointment."

SECTION 2-22.

1118

1119 Said title is further amended by revising Code Section 37-7-147, relating to appointment of
1120 patient representatives and guardians ad litem, notice provisions, and duration and scope of
1121 guardianship ad litem, as follows:

1122 "37-7-147.

1123 (a) At the time a patient is admitted to any facility under this chapter, that facility shall use
1124 diligent efforts to secure the names and addresses of at least two representatives, which
1125 names and addresses shall be entered in the patient's clinical record.

1126 (b) The patient may designate one representative; the second representative or, in the
1127 absence of designation of one representative by the patient, both representatives shall be
1128 selected by the facility. If the facility is to select both representatives, it must make one
1129 selection from among the following persons in the order of listing: the patient's mental
1130 health care agent, legal guardian, spouse, adult child, parent, attorney, adult next of kin, or
1131 adult friend, provided that, in the case of a patient whose representative or representatives
1132 have been appointed by the court under Code Section 37-7-62, the facility shall not select
1133 a different representative. The second representative shall also be selected from the above
1134 list but without regard to the order of listing, provided that the second representative shall
1135 not be the person who filed the petition to have the patient admitted to the facility.

1136 (c) If the facility is unable to secure at least two representatives after diligent search or if
1137 the department is the guardian of the patient, that fact shall be entered in the patient's
1138 clinical record and the facility shall apply to the court in the county of the patient's
1139 residence for the appointment of a guardian ad litem, which guardian ad litem shall not be
1140 the department. On application of any person or on its own motion, the court may also
1141 appoint a guardian ad litem for a patient for whom two representatives have been named
1142 whenever the appointment of a guardian ad litem is deemed necessary for protection of the
1143 patient's rights. Such guardian ad litem shall also act as representative of the patient and
1144 shall have the powers granted to representatives by this chapter.

1145 (d) At any time notice is required by this chapter to be given to the patient's
1146 representatives, such notice shall be served on the representatives designated under this
1147 Code section. The patient's guardian ad litem, if any, shall likewise be served. Unless
1148 otherwise provided, notice may be served in person or by ~~first class~~ first-class mail. When
1149 notice is served by mail, a record shall be made of the date of mailing and shall be placed
1150 in the patient's clinical record. Service shall be completed upon mailing.

1151 (e) At any time notice is required by this chapter to be given to the patient, the date on
1152 which notice is given shall be entered on the patient's clinical record. If the patient is unable
1153 to comprehend the written notice, a reasonable effort shall be made to explain the notice
1154 to him or her.

1155 (f) At the time a court enters an order pursuant to this chapter, such order and notice of the
1156 date of entry of the order shall be served on the patient and his or her representatives as
1157 provided in subsection (d) of this Code section.

1158 (g) Notice of an involuntary patient's admission to a facility shall be given to his or her
1159 representatives in writing. If such involuntary admission is to an emergency receiving
1160 facility, notice shall also be given by that facility to the patient's representatives by
1161 telephone or in person as soon as possible.

1162 (h) In every instance in which a court shall appoint a guardian ad litem for any person
1163 pursuant to the terms of this chapter, such guardianship shall be for the limited purpose
1164 stated in the order of the court and shall expire automatically after 90 days or after a lesser
1165 time stated in the order. The responsibility of the guardian ad litem shall not extend
1166 beyond the specific purpose of the appointment."

1167 **SECTION 2-23.**

1168 Said title is further amended by revising Code Section 37-7-148, relating to rights of patients
1169 or representatives to petition for writ of habeas corpus and for judicial protection of rights
1170 and privileges granted by this chapter, as follows:

1171 "37-7-148.

1172 (a) At any time and without notice, a person detained by a facility, a mental health care
1173 agent named in such person's psychiatric advance directive, a legal guardian of such
1174 person, or a relative or friend on behalf of such person may petition, as provided by law,
1175 for a writ of habeas corpus to question the cause and legality of detention and to request
1176 any court of competent jurisdiction on its own initiative to issue a writ for release, provided
1177 that, in the case of any such petition for the release of a person detained in a facility
1178 pursuant to a court order under Code Section 17-7-130 or 17-7-131, a copy of the petition
1179 along with proper certificate of service shall also be served upon the presiding judge of the
1180 court ordering such detention and the prosecuting attorney for such court, which service
1181 may be made by certified mail or statutory overnight delivery, return receipt requested.

1182 (b) A patient or his or her representatives may file a petition in the appropriate court
1183 alleging that the patient is being unjustly denied a right or privilege granted by this chapter
1184 or that a procedure authorized by this chapter is being abused. Upon the filing of such a
1185 petition, the court shall have the authority to conduct a judicial inquiry and to issue
1186 appropriate orders to correct any abuse under this chapter."

1187

SECTION 2-24.

1188 Title 49 of the Official Code of Georgia Annotated, relating to social services, is amended
1189 in Code Section 49-6-72, relating to definitions relative to the "Georgia Family Caregiver
1190 Support Act," by revising paragraph (9) as follows:

1191 "(9) 'Primary caregiver' means the one identified relative or other person in a relationship
1192 of responsibility, such as an agent under a valid durable power of attorney for health care,
1193 a or health care agent under a valid advance directive for health care, or a mental health
1194 care agent under a valid psychiatric advance directive, who has assumed the primary
1195 responsibility for the provision of care needed to maintain the physical or mental health
1196 of a functionally dependent older adult or other adult suffering from dementia, who lives

1197 in the same residence with such individual, and who does not receive financial
1198 compensation for the care provided. A substantiated case of abuse, neglect, or
1199 exploitation, as defined in Chapter 5 of Title 30, the 'Disabled Adults and Elder Persons
1200 Protection Act,' or pursuant to any other civil or criminal statute regarding an older adult,
1201 shall prohibit a primary caregiver from receiving benefits under this article unless
1202 authorized by the department to prevent further abuse."

1203 **SECTION 2-25.**

1204 Said title is further amended in Code Section 49-6-82, relating to definitions relative to
1205 licensure of adult day centers, by revising paragraph (7) as follows:

1206 "(7) 'Primary caregiver' means the one identified relative or other person in a relationship
1207 of responsibility, such as an agent under a valid durable power of attorney for health care,
1208 a or health care agent under a valid advance directive for health care, or a mental health
1209 care agent under a valid psychiatric advance directive, who has assumed the primary
1210 responsibility for the provision of care needed to maintain the physical or mental health
1211 of an aging adult, who lives in the same residence with such individual, and who does not
1212 receive financial compensation for the care provided."

1213 **PART III**

1214 **SECTION 3-1.**

1215 All laws and parts of laws in conflict with this Act are repealed.