

The House Committee on Health and Human Services offers the following substitute to HB 752:

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 10, 16, 19, 29, 31, 37, and 49 of the Official Code
15 of Georgia Annotated, relating to commerce and trade, crimes and offenses, domestic
16 relations, guardian and ward, health, mental health, and social services, respectively, so as
17 to provide for interaction and relationship with advance directives for health care; to provide
18 for application; to provide for statutory construction; to provide for conforming references

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19 and consistent terminology; to provide for related matters; to repeal conflicting laws; and for
20 other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 PART I
23 SECTION 1-1.

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

26 "CHAPTER 11

27 37-11-1.

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

29 37-11-2.

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

32 37-11-3.

33 As used in this chapter, the term:

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

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

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

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

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

51 (6) 'Mental health care' means any care, treatment, service, or procedure to maintain,
52 diagnose, treat, or provide for a declarant's mental or emotional illness, developmental
53 disability, or addictive disease.

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

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

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

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

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

70 37-11-4.

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

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

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

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

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

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

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

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

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

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

91 provider or facility to refuse to comply with the directive as set forth in Code Section
92 37-11-12.

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

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

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

105 37-11-5.

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

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

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

112 (d) An agent appointed by a declarant:

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

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

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

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

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

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

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

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

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

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

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

159 37-11-6.

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

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

170 records that the agent deems relevant to the exercise of the agent's powers, whether the
171 records relate to mental health or any other medical condition and whether they are in the
172 possession of or maintained by any physician, psychiatrist, psychologist, therapist, facility,
173 or other health care provider, despite contrary provisions of any other statute or rule of law.
174 (c) The authority given an agent by this Code section shall include all rights that a
175 declarant has under the federal Health Insurance Portability and Accountability Act of
176 1996, P.L. 104-191, and its implementing regulations regarding the use and disclosure of
177 individually identifiable health information and other medical records.

178 37-11-7.

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

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

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

188 37-11-8.

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

194 37-11-9.

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

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

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

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

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

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

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

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

219 37-11-10.

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

223 37-11-11.

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

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

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

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

235 37-11-12.

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

238 (A) Unavailable;

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

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

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

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

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

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

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

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

268 (e) A psychiatric advance directive shall not limit the involuntary examination, treatment,
269 or hospitalization of patients pursuant to Chapter 3 or Chapter 7 of this title or evaluations

270 or treatment services rendered pursuant to a court order under Code Section 17-7-130,
271 17-7-130.1, or 17-7-131.

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

275 37-11-13.

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

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

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

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

294 (3) If the actions of a provider, facility, or person who fails to comply with any
295 instruction contained in a directive or with any direction or decision by a mental health

296 care agent are substantially in accord with reasonable medical standards at the time of
297 consent or refusal of mental health care and such provider, facility, or person cooperates
298 in the transfer of the declarant pursuant to subsection (d) of Code Section 37-11-12, such
299 provider, facility, or person shall not be subject to civil liability, criminal prosecution, or
300 discipline for unprofessional conduct for failure to comply with the psychiatric advance
301 directive;

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

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

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

316 37-11-14.

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

321 37-11-15.

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

324 (b) The use of the form set forth in Code Section 37-11-16 or a similar form after July 1,
 325 2021, in the creation of a psychiatric advance directive shall be deemed lawful and, when
 326 such form is used and it meets the requirements of this chapter, it shall be construed in
 327 accordance with the provisions of this chapter.

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

333 37-11-16.

334 **'GEORGIA PSYCHIATRIC ADVANCE DIRECTIVE**

335 By: _____ Date of Birth: _____
 336 (Print Name) (Month/Day/Year)

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

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

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

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

350 This psychiatric advance directive has four parts:

351 PART ONE STATEMENT OF INTENT AND TREATMENT PREFERENCES.

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

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

371 mental health care agent about this important role.

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

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

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

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

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

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

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

395 **PART ONE: STATEMENT OF INTENT**
 396 **AND TREATMENT PREFERENCES**

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

412 **(1) STATEMENT OF INTENT**

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

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

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

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

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

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

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

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

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

448 _____
449 _____
450 _____

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

453 _____
454 _____
455 _____

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

457 _____
458 _____
459 _____

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

462 _____
 463 _____
 464 _____

465 **(3) PREFERRED CLINICIANS**

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

468 Name and telephone numbers:
 469 _____
 470 _____
 471 _____

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

473 Names:
 474 _____
 475 _____
 476 _____

477 I refuse to be treated by the following clinicians:

478 Names:
 479 _____
 480 _____
 481 _____

482 **(4) TREATMENT INSTRUCTIONS**

483 **Medications**

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

487 _____
 488 _____
 489 _____

490 If additional medications become necessary, I prefer and consent to take the following
 491 medications:

492 _____
 493 _____
 494 _____

495 I cannot tolerate the following medications because:

496 _____
 497 _____
 498 _____

499 I am allergic to the following medications:

500 _____
 501 _____
 502 _____

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

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

511 Medication in pill form: Yes _____ No _____

512 Reason: _____

513 Liquid medication: _____ Yes _____ No _____

514 Reason: _____

515 Medication by injection: _____ Yes _____ No _____

516 Reason: _____

517 Covert medication

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

519 Reason: _____

520 **Hospitalization is Not My First Choice**

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

523 _____

524 _____

525 _____

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

527 _____

528 _____

529 _____

530 Additional instructions that may help me avoid a hospitalization:

531 _____

532 _____

533 _____

534 **Treatment Facilities**

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

537 _____

538 _____

539 _____

540 I refuse to be treated at the following facilities:

541 _____

542 _____

543 _____

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

545 _____

546 _____

547 _____

548 I generally react to being hospitalized as follows:

549 _____

550 _____

551 _____

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

553 _____

554 _____

555 _____

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

557 _____

558 _____

559 _____

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

561 I prefer the following interventions as indicated by my initials and consent to any

562 intervention where I have initialed next to "yes."

563 Seclusion: Yes No

564 Reason:

565 Physical restraints: Yes No

566 Reason:

567 Experimental treatment: Yes No

568 Reason:

569 Electroconvulsive therapy (ECT): Yes No

570 Reason:

571 Any limitations on consent to the administration of electroconvulsive therapy:

572 _____

573 _____

574 _____

575 Other instructions as to my preferred interventions:

576 _____

577 _____

578 _____

579 **(5) ADDITIONAL STATEMENTS**

580 *[This section is optional. This PART will be effective even if this section is left blank.*

581 *This section allows you to state additional mental health treatment preferences, to*

582 *provide additional guidance to your mental health care agent (if you have selected a*

583 *mental health care agent in PART TWO), or to provide information about your personal*

584 *and religious values about your mental health care and treatment. Understanding that*

585 *you cannot foresee everything that could happen to you, you may want to provide*

586 *guidance to your mental health care agent (if you have selected a mental health care*

587 *agent in PART TWO) about following your mental health treatment preferences.]*

588
589
590

591

PART TWO: MENTAL HEALTH CARE AGENT

592
593
594
595
596
597
598
599
600
601
602
603
604
605

[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.]

606

(6) MENTAL HEALTH CARE AGENT

607
608

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

609
610
611
612

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

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

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

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

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

624 Name:
 625 Address:
 626 Telephone Numbers:
 627 (Home, Work, and Mobile)

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

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

633 Name:
 634 Address:
 635 Telephone Numbers:
 636 (Home, Work, and Mobile)

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

639 _____

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

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

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

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

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

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

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

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

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

671 I understand that under Georgia law:

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

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

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

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

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

686 _____
687 _____
688 _____

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

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

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

694

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

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

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

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

699 _____
700 _____
701 _____

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

703 Name: _____ Telephone Number: _____

704 Relationship: _____

705 Name: _____ Telephone Number: _____

706 Relationship: _____

707 **(12) HELP FROM OTHERS**

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

710 Name: _____ Telephone Number: _____

711 Responsibility: _____

712 Name: _____ Telephone Number: _____

713 Responsibility: _____

714 Name: _____ Telephone Number: _____

715 Responsibility: _____

716

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

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

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

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

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

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

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

737 A witness:

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

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

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

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

750 _____
751 (Signature of Declarant)

(Date)

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

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

758 Print Name: _____

759 Address: _____

760 _____
 761 (Signature of Second Witness) (Date)

762 Print Name: _____

763 Address: _____

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

765 **PART II**
 766 **SECTION 2-1.**

767 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is
 768 amended by revising Code Section 10-6B-3, relating to applicability of the 'Georgia Power
 769 of Attorney Act,' as follows:

770 "10-6B-3.

771 This chapter shall apply to all powers of attorney except:

- 772 (1) A power to the extent it is coupled with an interest in the subject of the power,
773 including a power given to or for the benefit of a creditor in connection with a credit
774 transaction;
- 775 (2) A power to make health care decisions, including but limited to, mental health care
776 decisions;
- 777 (3) Any delegation of voting, management, or similar rights related to the governance
778 or administration of an entity or business, including, but not limited to, delegation of
779 voting or management rights;
- 780 (4) A power created on a form prescribed by a government or governmental subdivision,
781 agency, or instrumentality for a governmental purpose;
- 782 (5) A power created by a person other than an individual;
- 783 (6) A power that grants authority with respect to a single transaction or series of related
784 transactions involving real estate;
- 785 (7) A power given to a transfer agent to facilitate a specific transfer or disposition of one
786 or more identified stocks, bonds, or other financial instruments;
- 787 (8) A power authorizing a financial institution or broker-dealer, or an employee of the
788 financial institution or broker-dealer, to act as agent for the account owner in executing
789 trades or transfers of cash, securities, commodities, or other financial assets in the regular
790 course of business;
- 791 (9) Powers of attorney provided for under Titles 19 and 33; and
- 792 (10) As set forth in Code Section 10-6B-81."

793 **SECTION 2-2.**

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

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823 employee or agent thereof to provide essential services or shelter to any person in the
824 absence of another legal obligation to do so."

825 **SECTION 2-4.**

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

828 "(f) This Code section shall not apply to a physician nor any person acting under a
829 physician's direction nor to a hospital, hospice, or long-term care facility, nor any agent or
830 employee thereof who is in good faith acting within the scope of his or her employment or
831 agency or who is acting in good faith in accordance with a living will, a durable power of
832 attorney for health care, an advance directive for health care, a psychiatric advance
833 directive, a Physician Orders for Life-Sustaining Treatment form pursuant to Code Section
834 31-1-14, an order not to resuscitate, or the instructions of the patient or the patient's lawful
835 surrogate decision maker."

836 **SECTION 2-5.**

837 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is
838 amended in Code Section 19-8-23, relating to where records of adoption are kept,
839 examination by parties and attorneys, and use of information by agency and department, by
840 revising paragraph (1) of subsection (d) as follows:

841 "(d)(1) Upon the request of a party at interest in the adoption, a child, legal guardian, ~~or~~
842 health care agent, or mental health care agent of an adopted individual or a provider of
843 medical services to such a party, child, legal guardian, ~~or~~ health care agent, or mental
844 health care agent when certain information would assist in the provision of medical care,
845 a medical emergency, or medical diagnosis or treatment, the department or child-placing
846 agency shall access its own records on finalized adoptions for the purpose of adding
847 subsequently obtained medical information or releasing nonidentifying medical and

848 health history information contained in its records pertaining to an adopted individual or
849 the biological parents or relatives of the biological parents of the adopted individual. For
850 purposes of this paragraph, the term 'health care agent' shall have the meaning provided
851 by Code Section 31-32-2 and the term 'mental health care agent' shall have the meaning
852 provided by Code Section 37-11-3."

853 **SECTION 2-6.**

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

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

862 **SECTION 2-7.**

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

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

869 **SECTION 2-8.**

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

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

876 **SECTION 2-9.**

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

880 "(b) The state ombudsman or community ombudsman shall have the authority to enter any
881 long-term care facility and shall use his or her best efforts to enter such facility during
882 normal visiting hours. Upon entering the long-term care facility, the ombudsman shall
883 notify the administrator or, in the absence of the administrator, the person in charge of the
884 facility, before speaking to any residents. After notifying the administrator or the person
885 in charge of the facility, the ombudsman may communicate privately and confidentially
886 with residents of the facility, individually or in groups. The ombudsman shall have access
887 to the medical and social records of any resident if:

888 (1) The ombudsman has the permission of the resident or the legal representative or
889 guardian of the resident;

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

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

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

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

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

907 **SECTION 2-10.**

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

911 "(1) Any adult, for himself or herself, whether by living will, advance directive for health
912 care, psychiatric advance directive under Chapter 11 of Title 37, or otherwise;
913 (1.1) Any person authorized to give such consent for the adult under an advance directive
914 for health care or durable power of attorney for health care under Chapter 32 of this title
915 or psychiatric advance directive under Chapter 11 of Title 37;"

916 **SECTION 2-11.**

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

920 "(10.1) 'Mental health care' shall have the same meaning as in Code Section 37-11-3.

921 (10.2) 'Mental health care agent' means an agent appointed under a psychiatric advance
 922 directive in accordance with Chapter 11 of Title 37."

923 "(12.1) 'Psychiatric advance directive' means a written document voluntarily executed
 924 by an individual in accordance with the requirements of Code Section 37-11-9."

925 **SECTION 2-12.**

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

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

929 My health care agent will make health care decisions for me when I am unable to
 930 communicate my health care decisions or I choose to have my health care agent
 931 communicate my health care decisions.

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

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

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

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

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

951 I understand that under Georgia law:

- 952 •My health care agent may refuse to act as my health care agent;
- 953 •A court can take away the powers of my health care agent if it finds that my health
954 care agent is not acting properly; and
- 955 •My health care agent does not have the power to make health care decisions for me
956 regarding ~~psychosurgery~~, sterilization, ~~or treatment~~ or involuntary hospitalization, or
957 involuntary treatment for mental or emotional illness, developmental disability, or
958 addictive disease.
- 959 • My health care agent does not have the power to make health care decisions that are
960 otherwise covered under a psychiatric advance directive that I have executed pursuant
961 to Chapter 11 of Title 37 of the Official Code of Georgia Annotated, including
962 decisions related to treatment or hospitalization for mental or emotional illness,
963 developmental disability, or addictive disease."

964 **SECTION 2-13.**

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

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

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

979 **SECTION 2-14.**

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

984 "(6) In the event a declarant has appointed a mental health care agent, no health care
985 provider, health care facility, or person who relies in good faith on the direction of such
986 mental health care agent shall be subject to civil liability, criminal prosecution, or
987 discipline for unprofessional conduct for complying with any direction or decision of
988 such mental health care agent in the event the declarant's condition is subsequently
989 determined to be a non-mental health care related condition."

990 **SECTION 2-15.**

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

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

997 **SECTION 2-16.**

998 Said title is further amended in Code Section 31-33-2, relating to furnishing copy of records
999 to patient, provider, or other authorized person, by revising paragraph (2) of subsection (a)
1000 as follows:

1001 "(2) Upon written request from the patient or a person authorized to have access to the
1002 patient's record under an advance directive for health care, a psychiatric advance
1003 directive, or a durable power of attorney for health care for such patient, the provider
1004 having custody and control of the patient's record shall furnish a complete and current
1005 copy of that record, in accordance with the provisions of this Code section. If the patient
1006 is deceased, such request may be made by the following persons:

1007 (A) The executor, administrator, or temporary administrator for the decedent's estate
1008 if such person has been appointed;

1009 (B) If an executor, administrator, or temporary administrator for the decedent's estate
1010 has not been appointed, by the surviving spouse;

1011 (C) If there is no surviving spouse, by any surviving child; and

1012 (D) If there is no surviving child, by any parent."

1013 **SECTION 2-17.**

1014 Said title is further amended in Code Section 31-36A-3, relating to definitions relative to the
1015 "Temporary Health Care Placement Decision Maker for an Adult Act," by adding a new
1016 paragraph to read as follows:

1017 "(1.1) 'Psychiatric advance directive' means a written document voluntarily executed by
1018 an individual in accordance with the requirements of Code Section 37-11-9."

1019 **SECTION 2-18.**

1020 Said title is further amended in Code Section 31-36A-6, relating to persons authorized to
1021 consent, expiration of authorization, limitations on authority to consent, effect on other laws,
1022 and immunity from liability or disciplinary action, by revising paragraph (2) of subsection
1023 (a) as follows:

1024 "(2) Any person authorized to give such consent for the adult under an advance directive
1025 for health care, psychiatric advance directive, or durable power of attorney for health care
1026 under Chapter 32 of this title;"

1027 **SECTION 2-19.**

1028 Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended in
1029 Code Section 37-1-1, relating to definitions relative to governing and regulation of mental
1030 health, by adding new paragraphs to read as follows:

1031 "(11.1) 'Mental health care agent' means an agent appointed under a psychiatric advance
1032 directive in accordance with Chapter 11 of Title 37."

1033 "(16.1) 'Psychiatric advance directive' means a written document voluntarily executed
1034 by an individual in accordance with the requirements of Code Section 37-11-9."

1035 **SECTION 2-20.**

1036 Said title is further amended in Code Section 37-1-20, relating to obligations of the
1037 Department of Behavioral Health and Developmental Disabilities, by revising paragraph (18)
1038 as follows:

1039 "(18) Classify host homes for persons whose services are financially supported, in whole
1040 or in part, by funds authorized through the department. As used in this Code section, the

1041 term 'host home' means a private residence in a residential area in which the occupant
 1042 owner or lessee provides housing and provides or arranges for the provision of food, one
 1043 or more personal services, supports, care, or treatment exclusively for one or two persons
 1044 who are not related to the occupant owner or lessee by blood or marriage. A host home
 1045 shall be occupied by the owner or lessee, who shall not be an employee of the same
 1046 community provider ~~which~~ that provides the host home services by contract with the
 1047 department. The department shall approve and enter into agreements with community
 1048 providers which, in turn, shall contract with host homes. The occupant owner or lessee
 1049 shall not be the guardian of any person served, the conservator of the property of such
 1050 person, or of their property nor the health care agent in such person's advance directive
 1051 for health care, or the mental health care agent in such person's psychiatric advance
 1052 directive. The placement determination for each person placed in a host home shall be
 1053 made according to such person's choice as well as the individual needs of such person in
 1054 accordance with the requirements of Code Section 37-3-162, 37-4-122, or 37-7-162, as
 1055 applicable to such person;"

1056 SECTION 2-21.

1057 Said title is further amended in Code Section 37-2-30, relating to definitions relative to the
 1058 Office of Disability Services Ombudsman, by revising paragraph (7) and by adding a new
 1059 paragraph, to read as follows:

1060 "(7) 'Health care agent' means an agent under a durable power of attorney for health care,
 1061 a ~~or~~ health care agent under an advance directive for health care, or a mental health care
 1062 agent under a psychiatric advance directive."

1063 "(9.1) 'Psychiatric advance directive' means a written document voluntarily executed by
 1064 a patient in accordance with the requirements of Code Section 37-11-9."

SECTION 2-22.

1065

1066 Said title is further amended by revising Code Section 37-3-20, relating to admission of
1067 voluntary patients, consent of parent or guardian to treatment, and giving notice of rights to
1068 patient at time of admission, as follows:

1069 "37-3-20.

1070 (a) The chief medical officer of any facility may receive for observation and diagnosis any
1071 patient 12 years of age or older making application therefor, any patient under 18 years of
1072 age for whom such application is made by his or her parent or guardian, any patient who
1073 has a psychiatric advance directive and for whom such application is made by his or her
1074 mental health care agent, and any patient who has been declared legally incompetent and
1075 for whom such application is made by his or her guardian. If found to show evidence of
1076 mental illness and to be suitable for treatment, such person may be given care and
1077 treatment at such facility; and such person may be detained by such facility until
1078 discharged pursuant to Code Section 37-3-21 or 37-3-22. The parents or guardian of a
1079 minor child must give written consent to such treatment. An individualized service plan
1080 shall be developed for such person as soon as possible.

1081 (b) Any individual voluntarily admitted to a facility under this Code section shall be given
1082 notice of his or her rights under this chapter at the time of his admission."

SECTION 2-23.

1083

1084 Said title is further amended by revising Code Section 37-3-147, relating to representatives
1085 and guardians ad litem, notification provisions, and duration and scope of guardianship ad
1086 litem, as follows:

1087 "37-3-147.

1088 (a) At the time a person who has mental illness is admitted to any facility under this
1089 chapter or as soon thereafter as reasonably possible given the person's condition or mental
1090 state at the time of admission, such facility shall use diligent efforts to secure the names

1091 and addresses of at least two representatives, which names and addresses shall be entered
1092 in the person's clinical record.

1093 (b) The patient may designate one representative; the second representative or, in the
1094 absence of designation of one representative by the patient, both representatives shall be
1095 selected by the facility. If the facility is to select both representatives, it must make one
1096 selection from among the following persons in the order of listing: the patient's mental
1097 health care agent, legal guardian, spouse, adult child, parent, attorney, adult next of kin, or
1098 adult friend, provided that, in the case of a patient whose representative or representatives
1099 have been appointed by the court under Code Section 37-3-62, the facility shall not select
1100 a different representative. The second representative shall also be selected from the above
1101 list but without regard to the order of listing, provided that the second representative shall
1102 not be the person who filed the petition to have the patient admitted to the facility.

1103 (c) If the facility is unable to secure at least two representatives after diligent search or if
1104 the department is the guardian of the patient, that fact shall be entered in the patient's
1105 clinical record and the facility shall apply to the court in the county of the patient's
1106 residence for the appointment of a guardian ad litem, which guardian ad litem shall not be
1107 the department. On application of any person or on its own motion, the court may also
1108 appoint a guardian ad litem for a patient for whom two representatives have been named
1109 whenever the appointment of a guardian ad litem is deemed necessary for protection of the
1110 patient's rights. Such guardian ad litem shall also act as representative of the patient and
1111 shall have the powers granted to representatives by this chapter.

1112 (d) At any time notice is required by this chapter to be given to the patient's
1113 representatives, such notice shall be served on the representatives designated under this
1114 Code section. The patient's guardian ad litem, if any, shall likewise be served. Unless
1115 otherwise provided, notice may be served in person or by first-class mail. When notice is
1116 served by mail, a record shall be made of the date of mailing and shall be placed in the
1117 patient's clinical record. Service shall be completed upon mailing.

1118 (e) At any time notice is required by this chapter to be given to the patient, the date on
1119 which notice is given shall be entered on the patient's clinical record. If the patient is
1120 unable to comprehend the written notice, a reasonable effort shall be made to explain the
1121 notice to him or her.

1122 (f) At the time a court enters an order pursuant to this chapter, such order and notice of the
1123 date of entry of the order shall be served on the patient and his or her representatives as
1124 provided in subsection (d) of this Code section.

1125 (g) Notice of an involuntary patient's admission to a facility shall be given to his or her
1126 representatives in writing. If such involuntary admission is to an emergency receiving
1127 facility, notice shall also be given by that facility to the patient's representatives by
1128 telephone or in person as soon as possible.

1129 (h) In every instance in which a court shall appoint a guardian ad litem for any person
1130 pursuant to the terms of this chapter, such guardianship shall be for the limited purpose
1131 stated in the order of the court and shall expire automatically after 90 days or after a lesser
1132 time stated in the order. The responsibility of the guardian ad litem shall not extend
1133 beyond the specific purpose of the appointment."

1134 **SECTION 2-24.**

1135 Said title is further amended in Code Section 37-3-148, relating to right of patients or
1136 representatives to petition for writ of habeas corpus and for judicial protection of rights and
1137 privileges granted by this chapter, by revising subsection (a) as follows:

1138 "(a) At any time and without notice, a person detained by a facility or a mental health care
1139 agent, legal guardian, relative, or friend on behalf of such person may petition, as provided
1140 by law, for a writ of habeas corpus to question the cause and legality of detention and to
1141 request any court of competent jurisdiction on its own initiative to issue a writ for release,
1142 provided that, in the case of any such petition for the release of a person detained in a
1143 facility pursuant to a court order under Code Section 17-7-130 or 17-7-131, a copy of the

1144 petition along with proper certificate of service shall also be served upon the presiding
1145 judge of the court ordering such detention and the prosecuting attorney for such court,
1146 which service may be made by certified mail or statutory overnight delivery, return receipt
1147 requested."

1148 **SECTION 2-25.**

1149 Said title is further amended by revising Code Section 37-4-107, relating to appointment of
1150 client representatives and guardians ad litem, notification provisions, and duration and scope
1151 of guardianship ad litem, as follows:

1152 "37-4-107.

1153 (a) At the time a client is admitted to any facility under this chapter, that facility shall
1154 make diligent efforts to secure the names and addresses of at least two representatives,
1155 which names and addresses shall be entered in the client's clinical record.

1156 (b) The client may designate one representative; the second representative or, in the
1157 absence of designation of one representative by the client, both representatives shall be
1158 selected by the facility. If the facility is to select both representatives, it must make one
1159 selection from among the following persons in the order of listing: the client's mental
1160 health care agent, legal guardian, spouse, adult child, parent, attorney, adult next of kin, or
1161 adult friend. The second representative shall also be selected from the above list but
1162 without regard to the order of listing, provided that the second representative shall not be
1163 the person who filed the petition seeking an order for the client to receive services from the
1164 department.

1165 (c) If the facility is unable to secure at least two representatives after diligent search or if
1166 the department is the guardian of the client, that fact shall be entered in the client's clinical
1167 record and the facility shall apply to the court in the county of the client's residence for the
1168 appointment of a guardian ad litem, which guardian ad litem shall not be the department.
1169 On application of any person or on its own motion, the court may also appoint a guardian

1170 ad litem for a client for whom two representatives have been named whenever the
1171 appointment of a guardian ad litem is deemed necessary for protection of the client's rights.
1172 Such guardian ad litem shall act as representative of the client on whom notice is to be
1173 served under this chapter and shall have the powers granted to representatives by this
1174 chapter.

1175 (d) At any time notice is required by this chapter to be given to the client's representatives,
1176 such notice shall be served on the representatives designated under this Code section. The
1177 client's guardian ad litem, if any, shall likewise be served. Unless otherwise provided,
1178 notice may be served in person or by first-class mail. When notice is served by mail, a
1179 record shall be made of the date of mailing and shall be placed in the client's clinical
1180 record. Service shall be completed upon mailing.

1181 (e) At any time notice is required by this chapter to be given to the client, the date on
1182 which notice is given shall be entered on the client's clinical record. If the client is unable
1183 to comprehend a written notice, a reasonable effort shall be made to explain the notice to
1184 him or her.

1185 (f) At the time a court enters an order pursuant to this chapter, such order and notice of the
1186 date of entry of the order shall be served on the client and his or her representatives as
1187 provided in subsection (d) of this Code section.

1188 (g) Notice of a client's admission to a facility shall be given to his or her representatives
1189 in writing.

1190 (h) In every instance in which a court shall appoint a guardian ad litem for any person
1191 pursuant to the terms of this chapter, such guardianship shall be for the limited purpose
1192 stated in the order of the court and shall expire automatically after 90 days or after a lesser
1193 time stated in the order. The responsibility of the guardian ad litem shall not extend
1194 beyond the specific purpose of the appointment."

SECTION 2-26.

1195

1196 Said title is further amended in Code Section 37-4-108, relating to right of clients or
1197 representatives to petition for writ of habeas corpus and for judicial protection of rights and
1198 privileges granted by chapter, by revising subsection (a) as follows:

1199 "(a) At any time and without notice, a person detained by a facility or a mental health care
1200 agent, legal guardian, relative, or friend on behalf of such person may petition as provided
1201 by law for a writ of habeas corpus to question the cause and legality of detention and to
1202 request any court of competent jurisdiction on its own initiative to issue a writ for release,
1203 provided that in the case of any such petition for the release of a person detained in a
1204 facility pursuant to a court order under Code Section 17-7-130 or 17-7-131, a copy of the
1205 petition, along with proper certificate of service, shall also be served upon the presiding
1206 judge of the court ordering such detention and the prosecuting attorney for such court,
1207 which service may be made by certified mail or statutory overnight delivery, return receipt
1208 requested."

SECTION 2-27.

1209

1210 Said title is further amended by revising Code Section 37-7-147, relating to appointment of
1211 patient representatives and guardians ad litem, notice provisions, and duration and scope of
1212 guardianship ad litem, as follows:

1213 "37-7-147.

1214 (a) At the time a patient is admitted to any facility under this chapter, that facility shall use
1215 diligent efforts to secure the names and addresses of at least two representatives, which
1216 names and addresses shall be entered in the patient's clinical record.

1217 (b) The patient may designate one representative; the second representative or, in the
1218 absence of designation of one representative by the patient, both representatives shall be
1219 selected by the facility. If the facility is to select both representatives, it must make one
1220 selection from among the following persons in the order of listing: the patient's mental

1221 health care agent, legal guardian, spouse, adult child, parent, attorney, adult next of kin, or
1222 adult friend, provided that, in the case of a patient whose representative or representatives
1223 have been appointed by the court under Code Section 37-7-62, the facility shall not select
1224 a different representative. The second representative shall also be selected from the above
1225 list but without regard to the order of listing, provided that the second representative shall
1226 not be the person who filed the petition to have the patient admitted to the facility.

1227 (c) If the facility is unable to secure at least two representatives after diligent search or if
1228 the department is the guardian of the patient, that fact shall be entered in the patient's
1229 clinical record and the facility shall apply to the court in the county of the patient's
1230 residence for the appointment of a guardian ad litem, which guardian ad litem shall not be
1231 the department. On application of any person or on its own motion, the court may also
1232 appoint a guardian ad litem for a patient for whom two representatives have been named
1233 whenever the appointment of a guardian ad litem is deemed necessary for protection of the
1234 patient's rights. Such guardian ad litem shall also act as representative of the patient and
1235 shall have the powers granted to representatives by this chapter.

1236 (d) At any time notice is required by this chapter to be given to the patient's
1237 representatives, such notice shall be served on the representatives designated under this
1238 Code section. The patient's guardian ad litem, if any, shall likewise be served. Unless
1239 otherwise provided, notice may be served in person or by ~~first class~~ first-class mail. When
1240 notice is served by mail, a record shall be made of the date of mailing and shall be placed
1241 in the patient's clinical record. Service shall be completed upon mailing.

1242 (e) At any time notice is required by this chapter to be given to the patient, the date on
1243 which notice is given shall be entered on the patient's clinical record. If the patient is unable
1244 to comprehend the written notice, a reasonable effort shall be made to explain the notice
1245 to him or her.

1246 (f) At the time a court enters an order pursuant to this chapter, such order and notice of the
1247 date of entry of the order shall be served on the patient and his or her representatives as
1248 provided in subsection (d) of this Code section.

1249 (g) Notice of an involuntary patient's admission to a facility shall be given to his or her
1250 representatives in writing. If such involuntary admission is to an emergency receiving
1251 facility, notice shall also be given by that facility to the patient's representatives by
1252 telephone or in person as soon as possible.

1253 (h) In every instance in which a court shall appoint a guardian ad litem for any person
1254 pursuant to the terms of this chapter, such guardianship shall be for the limited purpose
1255 stated in the order of the court and shall expire automatically after 90 days or after a lesser
1256 time stated in the order. The responsibility of the guardian ad litem shall not extend
1257 beyond the specific purpose of the appointment."

1258 **SECTION 2-28.**

1259 Said title is further amended by revising Code Section 37-7-148, relating to rights of patients
1260 or representatives to petition for writ of habeas corpus and for judicial protection of rights
1261 and privileges granted by this chapter, as follows:

1262 "37-7-148.

1263 (a) At any time and without notice, a person detained by a facility, a mental health care
1264 agent named in such person's psychiatric advance directive, a legal guardian of such
1265 person, or a relative or friend on behalf of such person may petition, as provided by law,
1266 for a writ of habeas corpus to question the cause and legality of detention and to request
1267 any court of competent jurisdiction on its own initiative to issue a writ for release, provided
1268 that, in the case of any such petition for the release of a person detained in a facility
1269 pursuant to a court order under Code Section 17-7-130 or 17-7-131, a copy of the petition
1270 along with proper certificate of service shall also be served upon the presiding judge of the

1271 court ordering such detention and the prosecuting attorney for such court, which service
1272 may be made by certified mail or statutory overnight delivery, return receipt requested.
1273 (b) A patient or his or her representatives may file a petition in the appropriate court
1274 alleging that the patient is being unjustly denied a right or privilege granted by this chapter
1275 or that a procedure authorized by this chapter is being abused. Upon the filing of such a
1276 petition, the court shall have the authority to conduct a judicial inquiry and to issue
1277 appropriate orders to correct any abuse under this chapter."

1278 **SECTION 2-29.**

1279 Title 49 of the Official Code of Georgia Annotated, relating to social services, is amended
1280 in Code Section 49-6-72, relating to definitions relative to the "Georgia Family Caregiver
1281 Support Act," by revising paragraph (9) as follows:

1282 "(9) 'Primary caregiver' means the one identified relative or other person in a relationship
1283 of responsibility, such as an agent under a valid durable power of attorney for health care,
1284 a or health care agent under a valid advance directive for health care, or a mental health
1285 care agent under a valid psychiatric advance directive, who has assumed the primary
1286 responsibility for the provision of care needed to maintain the physical or mental health
1287 of a functionally dependent older adult or other adult suffering from dementia, who lives
1288 in the same residence with such individual, and who does not receive financial
1289 compensation for the care provided. A substantiated case of abuse, neglect, or
1290 exploitation, as defined in Chapter 5 of Title 30, the 'Disabled Adults and Elder Persons
1291 Protection Act,' or pursuant to any other civil or criminal statute regarding an older adult,
1292 shall prohibit a primary caregiver from receiving benefits under this article unless
1293 authorized by the department to prevent further abuse."

SECTION 2-30.

1294

1295 Said title is further amended in Code Section 49-6-82, relating to definitions relative to
1296 licensure of adult day centers, by revising paragraph (7) as follows:

1297 "(7) 'Primary caregiver' means the one identified relative or other person in a relationship
1298 of responsibility, such as an agent under a valid durable power of attorney for health care,
1299 a or health care agent under a valid advance directive for health care, or a mental health
1300 care agent under a valid psychiatric advance directive, who has assumed the primary
1301 responsibility for the provision of care needed to maintain the physical or mental health
1302 of an aging adult, who lives in the same residence with such individual, and who does not
1303 receive financial compensation for the care provided."

PART III

1304

SECTION 3-1.

1305

1306 All laws and parts of laws in conflict with this Act are repealed.