

SENATE No. 923

The Commonwealth of Massachusetts

PRESENTED BY:

Diana DiZoglio, (BY REQUEST)

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing psychiatric advance directives for mental health care.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Brian Coppola

SENATE No. 923

By Ms. DiZoglio (by request), a petition (accompanied by bill, Senate, No. 923) of Brian Coppola for legislation to establish psychiatric advance directives for mental health care. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2269 OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act establishing psychiatric advance directives for mental health care.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of chapter 201D of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after the word “proxy”, in line 29, the following
3 words:- or psychiatric advance directive.

4 SECTION 2. Said section 1 of said chapter 201D is hereby further amended by adding
5 the following definition:- “Psychiatric advance directive” or “directive”, a document setting
6 forth specific instructions, preferences and details relative to the principal’s mental health care
7 executed in accordance with the requirements of this chapter.

8 SECTION 3. Said chapter 201D is hereby amended by inserting after section 1 the
9 following section:-

10 Section 1A. (a) Every competent person who is 18 years of age or older may execute a
11 psychiatric advance directive, setting forth specific instructions, preferences and details relative
12 to their mental health care . A health care agent, if one is appointed pursuant to section 2,
13 attending physician, or any other person with the authority to make health care decisions on the
14 principal’s behalf shall act in accordance with the directive, in the event that the principal lacks
15 capacity to make health care decisions because of mental illness or developmental disability, as
16 determined pursuant to section 6.

17 (b) A psychiatric advance directive shall be in writing and signed by the principal, or at
18 the direction of the principal, in the presence of 2 other adults who shall subscribe their names as
19 witnesses to the signature. The witnesses shall affirm in writing that the principal appeared to be
20 at least 18 years of age, of sound mind and under no constraint or undue influence. If the
21 principal has appointed a health care agent pursuant to section 2, the health care agent shall not
22 act as a witness to the execution of the directive. For the purposes of this section, every adult
23 shall be presumed to be competent and every psychiatric advance directive shall be presumed to
24 be properly executed unless a court determines otherwise.

25 (c) A psychiatric advance directive may include: (i) preferences and instructions relative
26 to treatment facilities, medications or treatments; (ii) a list of known allergies, side effects or
27 other medical conditions; (iii) a list of persons authorized to visit the principal at a treatment
28 facility; (iv) a list of a persons authorized to receive information about the principal’s mental
29 health and treatment; (v) a list of names and contact information for the principal’s mental health
30 care physicians; and (vi) any other special considerations, preferences or instructions related to
31 mental health treatment that the principal wishes to include.

32 (d) An agent shall comply with a principal's individual health care instructions as
33 provided in a psychiatric advance directive, and the agent shall not revoke the principal's
34 psychiatric advance directive, except as authorized by a court of competent jurisdiction.

35 SECTION 4. Section 5 of said chapter 201D is hereby amended by inserting after the
36 word "proxy", in line 4, the following words:- or any preferences or instructions in a psychiatric
37 advance directive.

38 SECTION 5. Said section 5 of said chapter 201D is hereby further amended by inserting
39 after the word "beliefs", in lines 9 and 10, the following words:- , and the principal's preferences
40 and instructions if expressed in a psychiatric advance directive.

41 SECTION 6. Said section 5 of said chapter 201D is hereby further amended by inserting
42 after the word "proxy", in lines 17, 21, 23, 27 and 29, the following words, in each instance:- or
43 psychiatric advance directive.

44 SECTION 7. Said section 5 of said chapter 201D is hereby further amended by inserting
45 after the word "proxy", in lines 22 and 24, the following words, in each instance:- or directive.

46 SECTION 8. The second paragraph of section 6 of said chapter 201D is hereby amended
47 by adding the following sentence:- A psychiatric advance directive executed pursuant to section
48 1A shall become binding upon an agent, attending physician or any person authorized to make
49 health care decisions on behalf of a principal, in accordance with this chapter, upon a
50 determination by a physician that the principal lacks capacity to make health care decisions
51 because of mental illness or developmental disability.

52 SECTION 9. Said section 6 of said chapter 201D is hereby further amended by inserting
53 after the word “proxy”, in line 29, the following words:- or to cause a psychiatric advance
54 directive to become binding upon an agent, attending physician, or any person authorized to
55 make health care decisions on behalf of a principal who is determined to lack capacity to make
56 health care decisions pursuant to this section.

57 SECTION 10. Said section 6 of said chapter 201D is hereby further amended by inserting
58 after the word “proxy”, in line 33, the following words:- , or a decision made by an agent that the
59 principal believes is contrary to the preferences or instructions expressed by the principal in a
60 psychiatric advance directive,.

61 SECTION 11. Section 7 of said chapter 201D is hereby amended by inserting after the
62 word “proxy”, in lines 1, 5, 12, and 17, the following words, in each instance:- or psychiatric
63 advance directive.

64 SECTION 12. Said section 7 of said chapter 201D is hereby further amended by inserting
65 after the word “proxy”, in line 3, the following words:- or directive.

66 SECTION 13. Said section 7 of said chapter 201D is hereby further amended by striking
67 out the third paragraph and inserting in place thereof the following paragraph:-

68 A health care proxy or psychiatric advance directive shall be revoked upon execution by
69 the principal of a subsequent proxy or directive. A health care proxy shall also be revoked upon
70 the divorce or legal separation of the principal and their spouse if the spouse is the principal’s
71 agent under the health care proxy.

72 SECTION 14. Section 8 of said chapter 201D is hereby amended by inserting after the
73 word “proxy”, in lines 4 and 5, the following words, in each instance:- or psychiatric advance
74 directive.

75 SECTION 15. Section 10 of said chapter 201D is hereby amended by inserting after the
76 word “proxy”, in line 2, the following words:- or psychiatric advance directive.

77 SECTION 16. Section 11 of said chapter 201D is hereby amended by inserting after the
78 word “proxy”, in line 2, the following words:- , psychiatric advance directive.

79 SECTION 17. Said section 11 of said chapter 201D is hereby further amended by
80 inserting after the word “proxy”, in line 5, the following words:- or directive.

81 SECTION 18. Section 14 of chapter 201D is hereby amended by inserting after the word
82 “decision”, in line 3, the following words:- or a principal’s decision as expressed in a psychiatric
83 advance directive.

84 SECTION 19. Said section 14 of said chapter 201D is hereby further amended by
85 inserting after the word “principal”, in line 4, the following words:- when the principal had
86 capacity to make health care decisions.

87 SECTION 20. Said section 14 of said chapter 201D is hereby further amended by
88 inserting after the word “decision”, in lines 9 and 11, the following words, in each instance:- or
89 the principal’s psychiatric advance directive.

90 SECTION 21. Said section 14 of said chapter 201D is hereby further amended by
91 inserting after the word “agent”, in line 12, the following words:- or by the principal in a
92 psychiatric advance directive.

93 SECTION 22. Section 15 of said chapter 201D is hereby amended by inserting after the
94 word “decision”, in line 3, the following words:- or a principal’s decision as expressed in a
95 psychiatric advance directive.

96 SECTION 23. Said section 15 of said chapter 201D is hereby further amended by
97 inserting after the word “principal”, in lines 4 and 8, the following words, in each instance:-
98 when the principal had capacity to make health care decisions.

99 SECTION 24. Said section 15 of said chapter 201D is hereby further amended by
100 inserting after the word “decision”, in lines 13 and 15, the following words, in each instance:- or
101 the principal’s psychiatric advance directive.

102 SECTION 25. Section 16 of said chapter 201D is hereby amended by inserting after the
103 word “proxy”, in line 1, the following words:- or psychiatric advance directive.

104 SECTION 26. Said section 16 of said chapter 201D is hereby further amended by striking
105 out the third paragraph and inserting in place thereof the following paragraph:- A competent
106 adult’s failure to appoint a health care agent, to provide the agent with specific health care
107 instructions, or to execute a psychiatric advance directive shall create no presumptions regarding
108 the adult’s wishes about health care.

109 SECTION 27. Section 17 of said chapter 201D is hereby amended by inserting after the
110 word “proxy”, in line 7, the following words:- or psychiatric advance directive.

111 SECTION 28. Said section 17 of said chapter 201D is hereby further amended by
112 striking out, in line 13, the word “five” and inserting in place thereof the following words:- 5, or
113 with the instructions or preferences set forth by the principal in a psychiatric advance directive.

114 SECTION 29. The department of mental health shall create a form to be used as a
115 psychiatric advance directive, and shall promulgate rules and regulations as necessary to carry
116 out this act.