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HOUSE BILL 459

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Edward C. Sandoval

AN ACT

RELATING TO HEALTH CARE; ENACTING THE MENTAL HEALTH CARE
TREATMENT DECISIONS ACT TO PROVIDE FOR MENTAL HEALTH TREATMENT
ADVANCE DIRECTIVES; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Mental Health Care Treatment Decisions Act".

Section 2. PURPOSE.--The purpose of the Mental Health
Care Treatment Decisions Act is to ensure appropriate care and
treatment of persons with behavioral health needs in the
community.

Section 3. DEFINITIONS.--As used in the Mental Health
Care Treatment Decisions Act:

A. "advance directive for mental health treatment"
means an individual instruction or power of attorney for mental

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1 health treatment made pursuant to the Mental Health Care
2 Treatment Decisions Act;

3 B. "agent" means an individual designated in a
4 power of attorney for mental health treatment to make a mental
5 health treatment decision for the individual granting the
6 power;

7 C. "capacity" means an individual's ability to
8 understand and appreciate the nature and consequences of
9 proposed mental health treatment, including significant
10 benefits and risks and alternatives to the proposed mental
11 health treatment, and to make and communicate an informed
12 mental health treatment decision. A written determination or
13 certification of lack of capacity shall be made only according
14 to the provisions of the Mental Health Care Treatment Decisions
15 Act;

16 D. "emancipated minor" means a person between the
17 ages of sixteen and eighteen who has been married, who is on
18 active duty in the armed forces or who has been declared by
19 court order to be emancipated;

20 E. "guardian" means a judicially appointed guardian
21 having authority to make a mental health decision for an
22 individual;

23 F. "individual instruction" means an individual's
24 direction concerning a mental health treatment decision for the
25 individual, made while the individual has capacity, which is to

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1 be implemented when the individual has been determined to lack
2 capacity;

3 G. "mental health treatment" means services
4 provided for the prevention of, amelioration of symptoms of or
5 recovery from mental illness or emotional disturbance,
6 including electroconvulsive treatment, treatment with
7 medication, counseling, rehabilitation services or evaluation
8 for admission to a facility for care or treatment of persons
9 with mental illness, if required;

10 H. "mental health treatment decision" means a
11 decision made by an individual or the individual's agent or
12 guardian regarding the individual's mental health treatment,
13 including:

14 (1) selection and discharge of health care or
15 mental health treatment providers and institutions;

16 (2) approval or disapproval of diagnostic
17 tests, programs of medication and mental health treatment; and

18 (3) directions relating to mental health
19 treatment;

20 I. "mental health treatment facility" means an
21 institution, facility or agency licensed, certified or
22 otherwise authorized or permitted by law to provide mental
23 health treatment in the ordinary course of business;

24 J. "mental health treatment provider" or "health
25 care provider" means an individual licensed, certified or

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1 otherwise authorized or permitted by law to provide diagnosis
2 or mental health treatment in the ordinary course of business
3 or practice of a profession;

4 K. "mental illness" means a substantial disorder of
5 a person's emotional process, thoughts or cognition that
6 grossly impairs judgment, behavior or capacity to recognize
7 reality, but "mental illness" does not mean a developmental
8 disability;

9 L. "power of attorney for mental health treatment"
10 means the designation of an agent to make mental health
11 treatment decisions for the individual granting the power, made
12 while the individual has capacity;

13 M. "primary health care professional" means a
14 qualified health care professional designated by an individual
15 or the individual's agent or guardian to have primary
16 responsibility for the individual's health care or, in the
17 absence of a designation or if the designated qualified health
18 care professional is not reasonably available, a qualified
19 health care professional who undertakes that responsibility;

20 N. "principal" means an adult or emancipated minor
21 who, while having capacity, has made a power of attorney for
22 mental health treatment by which the adult or emancipated minor
23 delegates the right to make mental health treatment decisions
24 for that adult or emancipated minor to an agent;

25 O. "qualified health care professional" means a

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1 licensed health care provider who is a physician, physician
2 assistant, nurse practitioner, nurse or psychologist;

3 P. "reasonably available" means able to be
4 contacted without undue effort and willing and able to act in a
5 timely manner considering the urgency of the patient's mental
6 health treatment needs;

7 Q. "supervising health care provider" means the
8 primary qualified health care professional or, if the primary
9 qualified health care professional is not reasonably available,
10 the health care provider who has undertaken primary
11 responsibility for an individual's health care; and

12 R. "ward" means an adult or emancipated minor for
13 whom a guardian has been appointed.

14 Section 4. ADVANCE DIRECTIVE FOR MENTAL HEALTH
15 TREATMENT.--

16 A. An adult or emancipated minor, while having
17 capacity, has the right to make the adult or emancipated
18 minor's own mental health treatment decisions and may give an
19 individual instruction. The individual instruction may be oral
20 or written; if oral, it shall be made by personally informing a
21 health care provider. The individual instruction may be
22 limited to take effect only if a specified condition arises.

23 B. An adult or emancipated minor, while having
24 capacity, may execute a power of attorney for mental health
25 treatment that may authorize the agent to make any mental

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1 health treatment decision the principal could have made while
2 having capacity. The power of attorney for mental health
3 treatment shall be in writing signed by the principal and
4 witnessed pursuant to Subsections I and J of this section. The
5 power of attorney for mental health treatment shall remain in
6 effect notwithstanding the principal's later incapacity under
7 the Mental Health Care Treatment Decisions Act or Article 5 of
8 the Uniform Probate Code. The power of attorney for mental
9 health treatment may include individual instructions. Unless
10 related to the principal by blood, marriage or adoption, an
11 agent may not be an attending qualified health care
12 professional or an employee of the qualified health care
13 professional or an owner, operator or employee of a mental
14 health treatment facility at which the principal is receiving
15 care.

16 C. Unless otherwise specified in a power of
17 attorney for mental health treatment, the authority of an agent
18 becomes effective only upon certification that the principal
19 lacks capacity and ceases to be effective upon a determination
20 that the principal has recovered capacity.

21 D. Unless otherwise specified in a written advance
22 directive for mental health treatment, written certification
23 that an individual lacks or has recovered capacity or that
24 another condition exists that affects an individual instruction
25 or the authority of an agent shall be made according to the

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1 provisions of the Mental Health Care Treatment Decisions Act.

2 E. An agent shall make a mental health treatment
3 decision in accordance with the principal's individual
4 instructions, if any, and other wishes to the extent known to
5 the agent. Otherwise, the agent shall make the decision in
6 accordance with the agent's determination of the principal's
7 best interest. In determining the principal's best interest,
8 the agent shall consider the principal's personal values to the
9 extent known to the agent.

10 F. A mental health treatment decision made by an
11 agent for a principal is effective without judicial approval.

12 G. A written advance directive for mental health
13 treatment may include the individual's nomination of a choice
14 of guardian of the individual.

15 H. The fact that an individual has executed an
16 advance directive for mental health treatment shall not
17 constitute an indication of mental illness.

18 I. A written advance directive for mental health
19 treatment is valid only if it is signed by the principal and a
20 witness who is at least eighteen years of age and who attests
21 that the principal:

22 (1) is known to the witness;

23 (2) signed the advance directive for mental
24 health treatment in the witness' presence;

25 (3) appears to have capacity; and

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1 (4) is not acting under duress, fraud or undue
2 influence.

3 J. For purposes of the advance directive for mental
4 health treatment, the witness shall not be:

5 (1) an agent of the principal;

6 (2) related to the principal by blood or
7 marriage;

8 (3) entitled to any part of the principal's
9 estate or have a claim against the principal's estate;

10 (4) the attending qualified health care
11 professional; or

12 (5) an owner, operator or employee of a mental
13 health treatment facility at which the principal is receiving
14 care or of any parent organization of the mental health
15 treatment facility.

16 Section 5. CAPACITY.--

17 A. The Mental Health Care Treatment Decisions Act
18 does not affect the right of an individual to make mental
19 health treatment decisions while having the capacity to do so.

20 B. An individual is presumed to have capacity to
21 make a mental health treatment decision, to give an advance
22 directive for mental health treatment or to revoke an advance
23 directive for mental health treatment.

24 C. An individual shall not be determined to lack
25 capacity solely on the basis that the individual chooses not to

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1 accept the treatment recommended by a health care provider.

2 D. An individual, at any time, may challenge a
3 determination that the individual lacks capacity by a signed
4 writing or by personally informing a health care provider of
5 the challenge. A health care provider who is informed by the
6 individual of a challenge shall promptly communicate the fact
7 of the challenge to the supervising health care provider and to
8 any mental health treatment facility at which the individual is
9 receiving care. Such a challenge shall prevail unless the
10 agent or the treating mental health care provider obtains an
11 order in district court finding the principal does not have the
12 capacity to make mental health treatment decisions.

13 E. A determination of lack of capacity under the
14 Mental Health Care Treatment Decisions Act shall not be
15 evidence of incapacity under the provisions of Article 5 of the
16 Uniform Probate Code.

17 F. A determination of incapacity shall only be made
18 by two persons, a qualified health care professional and a
19 mental health treatment provider. If after the examination the
20 principal is determined to lack capacity and is in need of
21 mental health treatment, a written certification, substantially
22 in the form provided in Subsection G of this section, of the
23 principal's condition shall be made a part of the principal's
24 medical record.

25 G. The following certification of the examination

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1 of a principal determining whether the principal is in need of
2 mental health treatment and whether the principal does or does
3 not lack capacity may be used by examiners:

4 "OPTIONAL EXAMINER'S CERTIFICATION

5 We, the undersigned, have made an examination of _____,
6 and do hereby certify that we have made a careful personal
7 examination of the actual condition of the person and on such
8 examination we find that _____:

- 9 1. (Is) (Is not) in need of mental health treatment; and
10 2. (Does) (Does not) lack capacity to participate in decisions
11 about (her) (his) mental health treatment.

12 The facts and circumstances on which we base our opinions are
13 stated in the following report of symptoms and history of case,
14 which is hereby made a part hereof.

15 According to the advance directive for mental health treatment,
16 (name of patient) _____, wishes to receive
17 mental health treatment in accordance with the preferences and
18 instructions stated in the advance directive for mental health
19 treatment.

20 We are duly licensed to practice in this state of New Mexico,
21 are not related to _____ by blood or marriage and have no
22 interest in her/his estate.

23 Witness our hands this _____ day of _____, 20__

24 _____ M.D., D.O., Ph.D., Other

25 _____ M.D., D.O., Ph.D., Other

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1 Subscribed and sworn to before me this _____ day of

2 _____, 20____

3 _____

4 Notary Public

5 REPORT OF SYMPTOMS AND HISTORY OF CASE BY EXAMINERS

6 1. GENERAL

7 Complete name _____

8 Place of residence _____

9 Sex _____ Ethnicity _____

10 Age _____

11 Date of Birth _____

12 2. STATEMENT OF FACTS AND CIRCUMSTANCES

13 Our determination that the principal (is) (is not) in need for
14 mental health treatment is based on the following:

15 _____
16 _____
17 _____

18 Our determination that the principal does not have the capacity
19 to participate in the principal's mental health treatment
20 decisions is based on:

21 1. the principal's ability to understand and communicate the
22 nature of the proposed health care or mental health treatment
23 described as:

24 _____
25 _____

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1 2. the principal's ability to understand and communicate the
2 consequences of the proposed health care or mental health
3 treatment described as:

4 _____
5 _____

6 3. the principal's ability to understand and communicate the
7 significant benefits, risks and alternatives to the proposed
8 health care or mental health treatment described as:

9 _____
10 _____

11 4. the principal's ability to understand and communicate a
12 choice about the proposed health care or mental health
13 treatment described as:

14 _____
15 _____

16 3. NAME AND RELATIONSHIPS OF FAMILY MEMBERS/OTHERS TO BE
17 NOTIFIED

18 Other data _____

19 Dated at _____, New Mexico, this _____ day
20 of _____, 20_____

21 _____ M.D., D.O., Ph.D.,

22 _____ Other Address

23 _____ M.D., D.O., Ph.D.,

24 _____ Other Address."

25 Section 6. REVOCATION OF ADVANCE DIRECTIVE FOR MENTAL

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1 HEALTH TREATMENT.--

2 A. An individual, while having capacity, may revoke
3 the designation of an agent either by a signed writing or by
4 personally informing the supervising health care provider. If
5 the individual cannot sign, a written revocation shall be
6 signed for the individual and be witnessed by two witnesses
7 pursuant to Subsections I and J of Section 4 of the Mental
8 Health Care Treatment Decisions Act, each of whom has signed at
9 the direction of the individual and in the presence of the
10 individual and each other.

11 B. An individual, while having capacity, may revoke
12 all or part of an advance directive for mental health
13 treatment, other than the designation of an agent, at any time
14 and in any manner that communicates an intent to revoke.

15 C. A mental health treatment provider, agent or
16 guardian who is informed of a revocation shall promptly
17 communicate the fact of the revocation to the supervising
18 health care provider and to any mental health treatment
19 facility at which the patient is receiving care.

20 D. The filing of a petition for or a decree of
21 annulment, divorce, dissolution of marriage or legal separation
22 revokes a previous designation of a spouse as agent, unless
23 otherwise specified in the decree or in a power of attorney for
24 mental health treatment. A designation revoked solely by this
25 subsection is revived by the individual's remarriage to the

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1 former spouse, by a nullification of the divorce, annulment or
2 legal separation or by the dismissal or withdrawal, with the
3 individual's consent, of a petition seeking annulment, divorce,
4 dissolution of marriage or legal separation.

5 E. An advance directive for mental health treatment
6 that conflicts with an earlier advance directive for mental
7 health treatment revokes the earlier directive to the extent of
8 the conflict.

9 F. Unless otherwise specified in the power of
10 attorney for mental health treatment, an advance health-care
11 directive pursuant to the Uniform Health-Care Decisions Act and
12 an advance directive for mental health treatment shall be
13 treated separately. A revocation of a power of attorney for
14 mental health treatment shall not affect the validity of a
15 power of attorney.

16 Section 7. OPTIONAL FORM FOR ADVANCE DIRECTIVE FOR MENTAL
17 HEALTH TREATMENT.--

18 A. The form provided in Subsection E of this
19 section may be used to create an individual instruction
20 regarding mental health treatment. An individual may complete
21 or modify all or any part of the form. The Mental Health Care
22 Treatment Decisions Act governs the effect of this or any other
23 writing used to create an advance directive for mental health
24 treatment.

25 B. A principal may designate a capable person

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1 eighteen years of age or older to act as an agent to make
2 mental health treatment decisions. An alternative agent may
3 also be designated to act as an agent if the original agent is
4 unable or unwilling to act at any time. An appointment of an
5 agent may be accomplished by using the form provided by
6 Subsection E of this section.

7 C. An agent who has accepted the appointment in
8 writing shall have authority to make decisions, in consultation
9 with the primary health care professional, about mental health
10 treatment on behalf of the principal only when the principal is
11 certified to lack capacity and to require mental health
12 treatment as provided by the Mental Health Care Treatment
13 Decisions Act. These decisions shall be consistent with any
14 wishes or instructions the principal has expressed in the
15 instruction. If the wishes or instructions of the principal
16 are not expressed, the agent shall act in what the agent
17 believes to be the best interest of the principal. The agent
18 may consent to evaluation for admission to inpatient mental
19 health treatment on behalf of the principal if so authorized in
20 the advance directive for mental health treatment.

21 D. An agent may renounce the agent's authority by
22 giving notice to the principal. If a principal lacks capacity,
23 the agent may renounce the agent's authority by giving notice
24 to the named alternative agent, if any, or, if none, to the
25 attending qualified health care professional or health care

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1 provider. The primary health care professional or health care
2 provider shall note the withdrawal of the last named agent as
3 part of the principal's medical record.

4 E. An advance directive for mental health treatment
5 may be executed by using the following optional form, completed
6 or modified to the extent desired by the individual, and the
7 form may be notarized:

8 "ADVANCE DIRECTIVE FOR MENTAL HEALTH TREATMENT

9 I, _____, being a person with capacity,
10 willfully and voluntarily make known my wishes about mental
11 health treatment, by my instructions to others through my
12 advance directive for mental health treatment, or by my
13 appointment of an agent, or both. If a guardian or an agent is
14 appointed to make mental health decisions for me, I intend this
15 document to take precedence over other means of ascertaining my
16 wishes and interests.

17 The fact that I may have left blanks in this directive
18 does not affect its validity in any way. I intend that all
19 completed sections be followed. I intend this directive to
20 take precedence over any other mental health directives I have
21 previously executed, to the extent that they are inconsistent
22 with this document, or unless I expressly state otherwise in
23 either document.

24 I understand that I may revoke this directive in whole or
25 in part if I am a person with capacity. I understand that I

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1 cannot revoke this directive if one qualified health care
2 professional and one mental health treatment provider find that
3 I am an incapacitated person, unless I successfully challenge
4 the determination of incapacity.

5 I understand there are some circumstances where my
6 provider may not have to follow my directive, specifically, if
7 the treatment requested in this directive is infeasible or
8 unavailable, the facility or provider is not licensed or
9 authorized to provide the treatment requested or the directive
10 conflicts with other applicable law.

11 I thus do hereby declare:

12 I. DECLARATION FOR MENTAL HEALTH TREATMENT

13 If a mental health treatment provider and a qualified health
14 care professional, one of whom is my primary health care
15 professional, if reasonably available, determine that my
16 ability to receive and evaluate information effectively or
17 communicate decisions is impaired to such an extent that I lack
18 the capacity to refuse or consent to mental health treatment
19 and that mental health treatment is necessary, I direct my
20 primary health care professional and a mental health treatment
21 provider, pursuant to the Mental Health Care Treatment
22 Decisions Act, to provide the mental health treatment I have
23 indicated below by my signature.

24 I understand that "mental health treatment" means services
25 provided for the prevention of, amelioration of symptoms of or

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1 recovery from mental illness or emotional disturbance,
2 including but not limited to electroconvulsive treatment,
3 treatment with medication, counseling, rehabilitation services
4 or evaluation for admission to a facility for care or treatment
5 of persons with mental illness, if required.

6 1. Preferences and Instructions About Treatment, Facilities
7 and Physicians

8 I would like the physician(s) named below to be involved in my
9 treatment decisions:

10 Dr. _____ Contact information _____

11 Dr. _____ Contact information _____

12 I do not wish to be treated by Dr. _____

13 Other Preferences: _____

14 Preferences and Instructions About Other Providers

15 I am receiving other treatment or care from providers who I
16 feel have an impact on my mental health care. I would like the
17 following treatment provider(s) to be contacted when this
18 directive is effective:

19 Name: _____ Profession: _____

20 Contact Information _____

21 Name: _____ Profession: _____

22 Contact Information _____

23 Preferences and Instructions About Medications for Mental
24 Health Treatment (*initial and complete all that apply*)

25 _____ I consent, and authorize my agent to consent, to the

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1 following medications: _____

2 ___ I do not consent, and I do not authorize my agent to
3 consent, to the administration of the following medications:

4 _____

5 ___ I am willing to take the medications excluded above if my
6 only reason for excluding them is the side effects, which
7 include _____, and these side
8 effects can be eliminated by dosage adjustment or other means.

9 ___ I am willing to try any other medications the hospital
10 doctor recommends.

11 ___ I am willing to try any other medications my outpatient
12 doctor recommends.

13 ___ I do not want to try any other medications.

14 Medication Allergies

15 I have allergies to, or severe side effects from, the
16 following:

17 _____

18 I have the following other preferences or instructions about
19 medications:

20 _____

21 Preferences and Instructions About Hospitalization and
22 Alternatives

23 *(initial all that apply and, if desired, rank "1" for first*
24 *choice, "2" for second choice, and so on)*

25 ___ In the event my psychiatric condition is serious enough

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1 to require 24-hour care and I have no physical conditions that
2 require immediate access to emergency medical care, I prefer to
3 receive this care in programs/facilities designed as
4 alternatives to psychiatric hospitalization.

5 ___ I would also like the interventions below to be tried
6 before hospitalization is considered:

7 ___ Calling someone or having someone call me when needed.

8 Name: _____ Telephone: _____

9 ___ Having a mental health service provider come to see me

10 ___ Going to a crisis triage center or emergency room

11 ___ Staying overnight at a crisis respite (temporary) bed

12 ___ Seeing a provider for help with psychiatric medications

13 ___ Other, specify: _____

14 Authority to Consent to Inpatient Treatment

15 I consent, and authorize my agent to consent, to evaluation for
16 admission to inpatient mental health treatment.

17 (Sign one)

18 ___ If deemed appropriate by my agent and treating physician

19 _____ Signature

20 or

21 ___ Under the following circumstances (specify symptoms,
22 behaviors or circumstances that indicate the need for
23 hospitalization) _____

24 _____ Signature

25 ___ I do not consent, or authorize my agent to consent, to

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1 evaluation for admission to inpatient treatment

2 _____ Signature

3 Preferences and Instructions About Use of Seclusion or
4 Restraint

5 I would like the interventions below to be tried before use of
6 seclusion or restraint is considered (*initial all that apply*)

7 ___ "Talk me down": one-on-one

8 ___ More medication

9 ___ Time out/privacy

10 ___ Show of authority/force

11 ___ Shift my attention to something else

12 ___ Set firm limits on my behavior

13 ___ Help me to discuss/vent feelings

14 ___ Decrease stimulation

15 ___ Offer to have neutral person settle dispute

16 ___ Other, specify _____

17 If it is determined that I am engaging in behavior that
18 requires seclusion, physical restraint and/or emergency use of
19 medication, I prefer these interventions in the order I have
20 chosen (*choose "1" for first choice, "2" for second choice, and*
21 *so on*):

22 ___ Seclusion

23 ___ Seclusion and physical restraint (combined)

24 ___ Medication by injection

25 ___ Medication in pill or liquid form

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1 In the event my physician decides to use medication in response
2 to an emergency situation after due consideration of my
3 preferences and instructions for emergency treatments stated
4 above, I expect the choice of medication to reflect any
5 preferences and instructions I have expressed in this
6 directive. The preferences and instructions I have expressed
7 in this section regarding medication in emergency situations do
8 not constitute consent to use of the medication for
9 nonemergency treatment.

10 Preferences and Instructions About Electroconvulsive Therapy

11 My wishes regarding electroconvulsive therapy are (*sign one*):

12 ___ I do not consent, nor authorize my agent to consent, to the
13 administration of electroconvulsive therapy.

14 _____ Signature

15 ___ I consent, and authorize my agent to consent, to the
16 administration of electroconvulsive therapy.

17 _____ Signature

18 ___ I consent, and authorize my agent to consent, to the
19 administration of electroconvulsive therapy, but only under the
20 following conditions:

21 _____
22 _____ Signature

23 Preferences and Instructions About Who Is Permitted to Visit

24 If I have been admitted to a mental health treatment facility,
25 the following people are not permitted to visit me there:

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1 Name: _____

2 Name: _____

3 Name: _____

4 I understand that persons not listed above may be permitted to
5 visit me.

6 Additional Instructions About My Mental Health Care

7 Other instructions about my mental health care: _____

8 In case of emergency, please contact: _____

9 Name: _____ Address: _____

10 Work Telephone: _____ Home telephone: _____

11 Physician: _____ Address: _____

12 Telephone: _____

13 The following may help me to avoid a hospitalization: _____

14 _____

15 I generally react to being hospitalized as follows: _____

16 Staff of the hospital or crisis unit can help me by doing the
17 following: _____

18 Refusal of Treatment

19 I do not consent to any mental health treatment.

20 _____

21 Signature

22 I further state that this document and the information
23 contained in it may be released to any requesting licensed
24 mental health professional.

25 _____

underscored material = new
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1 Signature of principal Date

2 _____

3 Signature of witness Date

4 II. APPOINTMENT OF AGENT

5 If my primary health care professional and a mental health
6 provider determine that my ability to receive and evaluate
7 information effectively or communicate decisions is impaired to
8 such an extent that I lack the capacity to refuse or consent to
9 mental health treatment and that mental health treatment is
10 necessary, I direct my primary health care professional and
11 other health care providers, pursuant to the Mental Health Care
12 Treatment Decisions Act, to follow the instructions of my
13 agent.

14 I hereby appoint:

15 Name _____

16 Address _____

17 Telephone _____ to act as my agent

18 to make decisions regarding my mental health treatment if I
19 become incapable of giving or withholding informed consent for
20 that treatment.

21 If the person named above refuses or is unable to act on my
22 behalf, or if I revoke that person's authority to act as my
23 agent, I authorize the following person to act as my agent:

24 Name _____

25 Address _____

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1 Telephone _____

2 My agent is authorized to make decisions that are consistent
3 with the wishes I have expressed in my declaration. If my
4 wishes are not expressed, my agent is to act in what he or she
5 believes to be my best interest.

6 _____

7 Signature of principal Date

8 III. CONFLICTING PROVISION

9 I understand that if I have completed both a declaration and
10 have appointed an agent and if there is a conflict between my
11 agent's decision and my declaration, my declaration shall take
12 precedence unless I indicate otherwise.

13 _____ Signature

14 I understand that if I have completed both an advance health
15 care directive and an advance directive for mental health
16 treatment, that those directives should be executed as separate
17 instructions.

18 _____ Signature

19 IV. OTHER PROVISIONS

20 1. In the absence of my ability to give directions regarding
21 my mental health treatment, it is my intention that this
22 advance directive for mental health treatment shall be honored
23 as the expression of my legal right to consent or to refuse to
24 consent to mental health treatment.

25 2. I direct the following concerning the care of my minor

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1 children:

2

3 _____
4 3. This advance directive for mental health treatment shall be
5 in effect until it is revoked.

6 4. I understand that I may revoke this advance directive for
7 mental health treatment at any time.

8 5. I understand and agree that if I have any prior advance
9 directives for mental health treatment, and if I sign this
10 advance directive for mental health treatment, my prior advance
11 directives for mental health treatment are revoked.

12 6. I understand the full importance of this advance directive
13 for mental health treatment and I am emotionally and mentally
14 competent to make this advance directive for mental health
15 treatment.

16 Signed this _____ day of _____, 20__

17

18 _____
19 Signature

20

21 _____
22 City, county and state of residence

23 This advance directive was signed in my presence.

24

25 _____
Signature of witness

26 Address

_____".
.159690.2

1 Section 8. DECISIONS BY GUARDIAN.--

2 A. A guardian shall comply with the ward's
3 individual instructions and may not revoke the ward's advance
4 directive for mental health treatment unless the appointing
5 court expressly so authorizes after notice to the agent and the
6 ward.

7 B. A mental health treatment decision of an agent
8 appointed by an individual having capacity takes precedence
9 over that of a guardian, unless the appointing court expressly
10 directs otherwise after notice to the agent and the ward.

11 C. Subject to the provisions of Subsections A and B
12 of this section, a mental health treatment decision made by a
13 guardian for the ward is effective without judicial approval,
14 if the appointing court has expressly authorized the guardian
15 to make mental health treatment decisions for the ward, in
16 accordance with the provisions of Sections 43-1-15 or 45-5-312
17 NMSA 1978, after notice to the ward and any agent.

18 Section 9. OBLIGATIONS OF MENTAL HEALTH TREATMENT
19 PROVIDER.--

20 A. Before implementing a mental health treatment
21 decision made for a patient, a supervising health care provider
22 shall promptly communicate to the patient the decision made and
23 the identity of the person making the decision.

24 B. A supervising health care provider who knows of
25 the existence of an advance directive for mental health

.159690.2

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1 treatment, a revocation of an advance directive for mental
2 health treatment or a challenge to a determination or
3 certification of lack of capacity shall promptly record its
4 existence in the patient's health care record and, if it is in
5 writing, shall request a copy and, if one is furnished, shall
6 arrange for its maintenance in the health care record.

7 C. A qualified health care professional shall
8 disclose an advance directive for mental health treatment to
9 other qualified health care professionals only when it is
10 determined that disclosure is necessary to give effect to or
11 provide treatment in accordance with an individual instruction.

12 D. A supervising health care provider who makes or
13 is informed of a written determination or certification
14 pursuant to Section 5 of the Mental Health Care Treatment
15 Decisions Act that a patient lacks or has recovered capacity or
16 that another condition exists that affects an individual
17 instruction or the authority of an agent or guardian shall
18 promptly record the determination in the patient's health care
19 record and communicate the determination or certification to
20 the patient and to any person then authorized to make mental
21 health treatment decisions for the patient.

22 E. Except as provided in Subsections F and G of
23 this section, a health care provider or mental health treatment
24 facility providing care to a patient shall comply:

25 (1) before and after the patient is determined

.159690.2

1 to lack capacity, with an individual instruction of the patient
2 made while the patient had capacity;

3 (2) with a reasonable interpretation of the
4 individual instruction made by a person then authorized to make
5 mental health treatment decisions for the patient; and

6 (3) with a mental health treatment decision
7 for the patient that is not contrary to an individual
8 instruction of the patient and is made by a person then
9 authorized to make mental health treatment decisions for the
10 patient, to the same extent as if the decision had been made by
11 the patient while having capacity.

12 F. A mental health treatment provider may only
13 decline to comply with an individual instruction or mental
14 health treatment decision for any of the following reasons:

15 (1) the treatment requested is infeasible or
16 unavailable;

17 (2) the facility or provider is not licensed
18 or authorized to provide the treatment requested; or

19 (3) the treatment requested conflicts with
20 other applicable law.

21 G. A mental health treatment provider or mental
22 health treatment facility may decline to comply with an
23 individual instruction or mental health treatment decision that
24 requires medically ineffective health care or health care
25 contrary to generally accepted health care standards applicable

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1 to the mental health treatment provider or mental health
2 treatment facility. "Medically ineffective health care" means
3 treatment that would not offer the patient any significant
4 benefit, as determined by a physician chosen by the principal
5 or agent.

6 H. A health care provider or mental health
7 treatment facility that declines to comply with an individual
8 instruction or mental health care decision shall:

9 (1) promptly so inform the patient, if
10 possible, and any person then authorized to make mental health
11 care decisions for the patient;

12 (2) provide continuing care to the patient
13 until a transfer can be effected; and

14 (3) unless the patient or person then
15 authorized to make mental health treatment decisions for the
16 patient refuses assistance, immediately make all reasonable
17 efforts to assist in the transfer of the patient to another
18 health care provider or mental health treatment facility that
19 is willing to comply with the individual instruction or
20 decision.

21 I. A health care provider or mental health
22 treatment facility shall not require or prohibit the execution
23 or revocation of an advance directive for mental health
24 treatment as a condition for providing health care.

25 J. The Mental Health Care Treatment Decisions Act

.159690.2

1 does not require or permit a mental health treatment facility
2 or health care provider to provide any type of mental health
3 treatment for which the mental health treatment facility or
4 health care provider is not licensed, certified or otherwise
5 authorized or permitted by law to provide.

6 Section 10. HEALTH CARE INFORMATION.--Unless otherwise
7 specified in an advance directive for mental health treatment,
8 a person then authorized to make mental health treatment
9 decisions for a patient has the same rights as the patient to
10 request, receive, examine, copy and consent to the disclosure
11 of medical or any other health care information.

12 Section 11. IMMUNITIES.--

13 A. A health care provider or mental health
14 treatment facility acting in good faith and in accordance with
15 generally accepted health care standards applicable to the
16 health care provider or mental health treatment facility is not
17 subject to civil or criminal liability or to discipline for
18 unprofessional conduct for:

19 (1) complying or attempting to comply with a
20 mental health treatment decision of a person apparently having
21 authority to make a mental health treatment decision for a
22 patient;

23 (2) declining to comply with a mental health
24 treatment decision of a person based on a belief that the
25 person then lacked authority;

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1 (3) complying or attempting to comply with an
2 advance directive for mental health treatment and assuming that
3 the directive was valid when made and has not been revoked or
4 terminated;

5 (4) declining to comply with a mental health
6 treatment directive as permitted; or

7 (5) complying or attempting to comply with any
8 other provision of the Mental Health Care Treatment Decisions
9 Act.

10 B. An individual acting as agent or guardian under
11 the Mental Health Care Treatment Decisions Act is not subject
12 to civil or criminal liability or to discipline for
13 unprofessional conduct for mental health treatment decisions
14 made in good faith.

15 Section 12. PROHIBITED PRACTICE.--

16 A. No insurer or other provider of benefits
17 regulated by the New Mexico Insurance Code or a state agency
18 shall require a person to execute or revoke an advance
19 directive for mental health treatment as a condition for
20 membership in, being insured for or receiving coverage or
21 benefits under an insurance contract or plan.

22 B. No insurer may condition the sale, procurement
23 or issuance of a policy, plan, contract, certificate or other
24 evidence of coverage, or entry into a pension, profit-sharing,
25 retirement, employment or similar benefit plan, upon the

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1 execution or revocation of an advance directive for mental
2 health treatment; nor shall the existence of an advance
3 directive for mental health treatment modify the terms of an
4 existing policy, plan, contract, certificate or other evidence
5 of coverage of insurance.

6 C. The provisions of this section shall be enforced
7 by the superintendent of insurance under the New Mexico
8 Insurance Code.

9 Section 13. STATUTORY DAMAGES.--

10 A. A health care provider or mental health
11 treatment facility that intentionally violates the Mental
12 Health Care Treatment Decisions Act is subject to liability to
13 the aggrieved individual for damages of five thousand dollars
14 (\$5,000) or actual damages resulting from the violation,
15 whichever is greater, plus reasonable attorney fees.

16 B. A person who intentionally falsifies, forges,
17 conceals, defaces or obliterates an individual's advance
18 directive for mental health treatment or a revocation of an
19 advance directive for mental health treatment without the
20 individual's consent or a person who coerces or fraudulently
21 induces an individual to give, revoke or not give or revoke an
22 advance directive for mental health treatment is subject to
23 liability to that individual for damages of five thousand
24 dollars (\$5,000) or actual damages resulting from the action,
25 whichever is greater, plus reasonable attorney fees.

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1 C. The damages provided in this section are in
2 addition to other types of relief available under other law,
3 including civil and criminal law and law providing for
4 disciplinary procedures.

5 Section 14. EFFECT OF COPY.--A copy of a written advance
6 directive for mental health treatment or revocation of an
7 advance directive for mental health treatment has the same
8 effect as the original.

9 Section 15. EFFECT OF THE MENTAL HEALTH CARE TREATMENT
10 DECISIONS ACT.--

11 A. The Mental Health Care Treatment Decisions Act
12 does not create a presumption concerning the intention of an
13 individual who has not made or who has revoked an advance
14 directive for mental health treatment.

15 B. Death resulting from the withholding or
16 withdrawal of health care in accordance with the Mental Health
17 Care Treatment Decisions Act does not for any purpose:

18 (1) constitute a suicide, a homicide or other
19 crime; or

20 (2) legally impair or invalidate a governing
21 instrument, notwithstanding any term of the governing
22 instrument to the contrary. "Governing instrument" means a
23 deed, will, trust, insurance or annuity policy, account with
24 POD (payment on death designation), security registered in
25 beneficiary form (TOD), pension, profit-sharing, retirement,

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1 employment or similar benefit plan, instrument creating or
2 exercising a power of appointment or a dispositive, appointive
3 or nominative instrument of any similar type.

4 C. The Mental Health Care Treatment Decisions Act
5 does not authorize mercy killing, assisted suicide, euthanasia
6 or the provision, withholding or withdrawal of health care, to
7 the extent prohibited by other statutes of this state.

8 D. The Mental Health Care Treatment Decisions Act
9 does not authorize or require a health care provider or mental
10 health treatment facility to provide health care contrary to
11 generally accepted health care standards applicable to the
12 health care provider or mental health treatment facility.

13 E. The Mental Health Care Treatment Decisions Act
14 does not authorize an agent to consent to the admission of an
15 individual to a mental health treatment facility. If the
16 individual's written advance directive for mental health
17 treatment expressly permits treatment in a mental health
18 treatment facility, the agent may present the individual to a
19 facility for evaluation for admission.

20 F. The Mental Health Care Treatment Decisions Act
21 does not affect other statutes of this state governing
22 treatment for mental illness of an individual admitted to a
23 mental health treatment facility, including involuntary
24 commitment to a mental health treatment facility for mental
25 illness.

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1 Section 16. TRANSITIONAL PROVISIONS.--

2 A. An advance directive for mental health treatment
3 is valid for purposes of the Mental Health Care Treatment
4 Decisions Act if it complies with the provisions of that act,
5 regardless of when or where executed or communicated.

6 B. The Mental Health Care Treatment Decisions Act
7 does not impair a guardianship, living will, durable power of
8 attorney, right-to-die statement or declaration or other
9 advance directive for health care decisions that is in effect
10 before July 1, 2006.

11 C. Any mental health treatment or psychiatric
12 advance directive, durable power of attorney for health care
13 decisions, living will, right-to-die statement or declaration
14 or similar document that is executed in another state or
15 jurisdiction in compliance with the laws of that state or
16 jurisdiction shall be deemed valid and enforceable in this
17 state to the same extent as if it were properly made in this
18 state.