

ENGROSSED HOUSE  
BILL NO. 1353

By: Crocker, Perry and  
Bryant of the House

and

Horner of the Senate

( mental health - Advance Directives for Mental Health Care  
Act - codification - effective date )

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 11-101 of Title 43A, unless  
there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Advance  
Directives for Mental Health Care Act".

SECTION 2. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 11-102 of Title 43A, unless  
there is created a duplication in numbering, reads as follows:

A. The Legislature finds that all competent persons have the  
fundamental right to control decisions relating to their own mental  
health treatment, including the decision to accept mental health  
treatment.

B. A capable adult may make a declaration of preferences or  
instruction which may include, but is not limited to, consent to  
mental health treatment.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-103 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Whenever used in the Advance Directives for Mental Health Care Act:

1. "Attending physician" means the physician licensed to practice in Oklahoma who has primary responsibility for the mental health treatment and care of the patient;

2. "Attorney-in-fact" means an adult properly appointed under this act;

3. "Declaration" means a written document voluntarily executed by the declarant in accordance with the requirements of this act;

4. "Declarant" means a person who has executed a declaration or designated an attorney-in-fact pursuant to this act;

5. "Health care facility" includes any program, institution, place, building or agency, or portion thereof, private or public, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, rehabilitative or preventive care to any person. The term "health care facility" includes, but is not limited to, health care facilities that are commonly referred to as hospitals, outpatient clinics, organized ambulatory health care facilities, emergency care facilities and centers, health maintenance organizations, and others providing similarly organized services regardless of nomenclature;

6. "Mental health treatment provider" means a licensed mental health professional as defined by Section 5-206 of this title;

7. "Physician" means an individual currently licensed to practice medicine in this state; and

8. "Incapable" means that, in the opinion of two physicians, a person's ability to receive and evaluate information effectively or communicate decisions is impaired as the result of a mental illness

to such an extent that the person currently lacks the capacity to make mental health treatment decisions.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-104 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. A declarant may designate a capable adult to act as attorney-in-fact to make decisions about mental health treatment as provided by this act. An alternative attorney-in-fact may also be designated to act as attorney-in-fact if the original designee is unable or unwilling to act at any time. An attorney-in-fact who has accepted the appointment in writing shall have authority to make decisions about mental health treatment on behalf of the declarant only when the declarant is determined to be incapable. These decisions shall be consistent with any desires the declarant has expressed in the declaration.

B. A capable adult may execute a declaration in accordance with the provisions of this act stating his or her mental health treatment wishes in the event he or she is determined to be incapable. A declaration is valid only if it is signed by the declarant and two capable adult witnesses. The witnesses must attest that the declarant is known to them, signed the declaration in their presence, appears to be of sound mind and is not under duress, fraud or undue influence. Persons specified in subsection D of this section shall not act as witnesses.

C. A declaration becomes operative when it is delivered to the declarant's physician or other mental health treatment provider and remains valid until revoked or expired. The physician or provider is authorized to act in accordance with an operative declaration when the declarant has been determined to be incapable as provided by this act. The physician or provider shall continue to obtain the declarant's informed consent to all mental health treatment

decisions when the declarant is capable of providing informed consent or refusal.

D. None of the following may serve as attorney-in-fact or as witness to the signing of a declaration:

1. The attending physician or mental health treatment provider or an employee of the physician or provider; or

2. An owner, operator or employee of a facility in which the declarant is a patient or resident.

E. An attorney-in-fact may withdraw by giving notice to the declarant. If a declarant is incapable, the attorney-in-fact may withdraw by giving notice to the attending physician or provider. The attending physician or provider shall note the withdrawal as part of the declarant's medical record.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-105 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The wishes of a declarant, at all times while the declarant is competent, shall supersede the effect of the declaration.

B. If a patient is incapable at the time of a determination that mental health treatment is necessary, a declaration executed in accordance with the Advance Directives for Mental Health Care Act is presumed to be valid.

C. For the purpose of the Advance Directives for Mental Health Care Act, a mental health treatment provider or health care facility may presume, in the absence of actual notice to the contrary, that a person who executed a declaration was of sound mind when the declaration was executed.

D. The fact that a person has executed a declaration shall not constitute an indication of mental incompetence.

E. A court order shall supersede a declaration in all circumstances.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-106 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. It shall be the responsibility of the declarant to provide for delivery of the declaration to the attending physician or other mental health treatment provider. In the event the declarant is comatose, incompetent, or otherwise mentally or physically incapable after executing the declaration, any other person may deliver the declaration to the physician. An attending physician who is so notified shall promptly make the declaration a part of the declarant's medical records.

B. Any person having possession of another person's declaration and who becomes aware that the declarant is in circumstances under which the terms of the declaration may become applicable, shall deliver the declaration to the declarant's attending physician, mental health treatment provider or to any health care facility in which the declarant is a patient.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-107 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. An attending physician or other mental health treatment provider who has been notified of the existence of a declaration executed pursuant to this act shall make all reasonable efforts to obtain the declaration and shall ascertain without delay whether the declarant is incapable.

B. A declarant appearing to require mental health treatment shall be examined by the licensed mental health professionals. If after the examination the declarant is determined to be "incapable", a written certification of the declarant's condition shall be made a part of the declarant's medical record and shall be substantially in the following form:

CERTIFICATION OF CONDITION SPECIFIED IN PATIENT'S DECLARATION

In my professional opinion, I certify that (name of patient)  
\_\_\_\_\_ is not able to participate in  
decisions concerning mental health treatment to be administered and  
has the following condition: (diagnosis)  
According to the declaration, (name of patient)  
\_\_\_\_\_ wishes to receive mental health  
treatment according to a personal mental health treatment plan as  
specified in the patient's declaration, under these circumstances.

Signed

Attending Physician

Signed

Second Attending Physician

SECTION 8. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 11-108 of Title 43A, unless  
there is created a duplication in numbering, reads as follows:

A. An attending physician and any other physician under the  
attending physician's direction or control, having possession of the  
patient's declaration or having knowledge that the declaration is  
part of the patient's record in the health care facility in which  
the declarant is receiving care, shall follow as closely as possible  
the terms of the declaration.

B. An attending physician who is unable to comply  
with the terms of the patient's declaration shall  
make the necessary arrangements to transfer the  
patient and the appropriate medical records without  
delay to another physician. A physician who  
transfers the patient without unreasonable delay,  
or who makes a good faith attempt to do so, shall  
not be subject to criminal prosecution or civil  
liability, and shall not be found to have  
committed an act of unprofessional conduct for  
refusal to comply with the terms of the

declaration. Transfer under these circumstances shall not constitute abandonment.

The failure of an attending physician to transfer in accordance with this subsection shall constitute professional misconduct.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-109 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A declaration may be revoked in whole or in part by the declarant at any time while the declarant is capable by any of the following methods:

1. By being destroyed by the declarant or by some person in the declarant's presence and at the declarant's direction;

2. By a written revocation signed and dated by the declarant expressing the declarant's intent to revoke. The attending physician shall record in the patient's medical record the time and date when the physician received notification of the written revocation;

3. By a declarant's unambiguous verbal expression, in the presence of two adult witnesses, of an intent to revoke the declaration. The revocation shall become effective upon communication to the attending physician or mental health treatment provider by the declarant or by both witnesses. The attending physician or mental health treatment provider shall record the time, date, and place, if different, of when the notification of the revocation was received; or

4. By a declarant's unambiguous verbal expression to an attending physician or mental health treatment provider.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-110 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A person shall not be required to execute or to refrain from executing a declaration as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of discharge from a health care facility.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-111 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. Any person who willfully conceals, cancels, defaces, alters, or obliterates the declaration of another without the declarant's consent, or who falsifies or forges a revocation of an advance directive of another shall be, upon conviction, guilty of a felony.

B. A person who in any way falsifies or forges the declaration of another, or who willfully conceals or withholds personal knowledge of a revocation of a declaration shall be, upon conviction, guilty of a felony.

C. A person who requires or prohibits the execution of a declaration as a condition for being insured for, or receiving, health care services shall be, upon conviction, guilty of a felony.

D. A person who coerces or fraudulently induces another to execute a declaration or revocation shall be, upon conviction, guilty of a felony.

E. The sanctions provided in this section do not displace any sanction applicable under other law.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-112 of Title 43A, unless there is created a duplication in numbering, reads as follows:

In the absence of actual notice of the revocation of a declaration, no health care facility, attending physician, mental health treatment provider, or other person acting under the direction of an attending physician or mental health treatment provider shall be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result

of the provision of medical treatment to a declarant in accordance with the Advance Directives for Mental Health Care Act unless the absence of actual notice resulted from the negligence of the health care provider, physician, or other person.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-113 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Anyone may petition the district court for appointment of a guardian for the declarant who has good reason to believe that the provision of medical treatment in a particular case:

1. Is contrary to the most recent expressed wishes of a declarant who was capable at the time of expressing the wishes;
2. Is being proposed pursuant to a declaration that has been falsified, forged, or coerced; or
3. Is being considered without the benefit of a revocation which has been unlawfully concealed, destroyed, altered or canceled.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-114 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Mental health treatment instructions contained in a declaration executed in accordance with the Advance Directives for Mental Health Care Act shall supersede:

1. Any contrary or conflicting instructions given by a proxy or an attorney for health care decisions unless the proxy appointment or the power of attorney expressly provides otherwise; and
2. Any instructions in any prior declaration.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-115 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A declaration for mental health treatment shall be notarized and shall be substantially in the following form:

DECLARATION FOR MENTAL HEALTH TREATMENT

I, \_\_\_\_\_, being an adult of sound mind, willfully and voluntarily make this declaration for mental health treatment to be followed if it is determined by a court or by two physicians that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means convulsive treatment, treatment with psychoactive medication, and admission to and retention in a facility for a period up to twenty-eight (28) days. I further state that this document and the information contained in it may be released to any requesting licensed mental health professional.

\_\_\_\_\_  
Declarant's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness 1

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness 2

\_\_\_\_\_  
Date

—  
I, \_\_\_\_\_, hereby state that the declarant has been evaluated and is competent and capable of making decisions pertaining to the execution of this document.

\_\_\_\_\_  
\_\_\_\_\_  
Doctor or Licensed Mental Health Professional      Date

SECTION 16.      NEW LAW      A new section of law to be codified in the Oklahoma Statutes as Section 11-116 of Title 43A, unless there is created a duplication in numbering, reads as follows:

If executed, a declaration designating an attorney-in-fact shall be attached to the declaration for mental health treatment and shall be substantially in the following form:

ATTORNEY-IN-FACT

I hereby appoint:

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE # \_\_\_\_\_

to act as my attorney-in-fact to make decisions regarding my mental health treatment if I become incapable of giving or withholding informed consent for that treatment.

If the person named above refuses or is unable to act on my behalf, or if I revoke that person's authority to act as my attorney-in-fact, I authorize the following person to act as my attorney-in-fact:

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE # \_\_\_\_\_

My attorney-in-fact is authorized to make decisions which are consistent with the wishes I have expressed in this declaration. If my wishes are not expressed, my attorney-in-fact is to act in what he or she believes to be my best interest.

\_\_\_\_\_  
(Signature of Declarant/Date)

ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT

I accept this appointment and agree to serve as attorney-in-fact to make decisions about mental health treatment for the declarant. I understand I have a duty to act consistently with the desires of the declarant as expressed in this appointment. I understand that this document gives me authority to make decisions about mental health treatment only while the declarant is incapable as determined by a court or two physicians. I understand that the declarant may revoke this declaration in whole or in part at any time and in any manner when the declarant is not incapable.

\_\_\_\_\_  
\_\_\_\_\_  
(Signature of Attorney-in-fact/Date)

(Printed name)

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(Signature of Alternate Attorney-in-fact/Date (Printed name)

SECTION 17. This act shall become effective November 1, 1995.

Passed the House of Representatives the 8th day of March, 1995.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1995.

President of the Senate