

## CHAPTER 233

**AN ACT** concerning advance directives for mental health care and supplementing Titles 26 and 30 of the Revised Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.26:2H-102 Short title.

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

C.26:2H-103 Findings, declarations relative to advance directives for mental health care.

2. The Legislature finds and declares that:

a. This State recognizes, in its law and public policy, a patient's right to make voluntary, informed choices to accept, reject, or choose among alternative courses of medical and surgical treatment, and specifically for a competent adult to plan ahead for health care decisions through the execution of an advance directive for health care, otherwise known as a living will or durable power of attorney for health care, and to have the wishes expressed therein respected, subject to certain limitations;

b. Advance directives for health care provide a vehicle for competent adults to operationalize their fundamental legal right to accept or refuse medical treatment in the event that they are rendered unable to make decisions and communicate with a health care provider about their treatment options because of serious illness, injury or permanent loss of mental capacity;

c. The issues affecting persons with mental illness and their psychiatric needs warrant enactment of a separate statute governing advance directives for these individuals, who: find their civil rights and due process protections frequently compromised; often lack the resources, societal supports and self-esteem needed to make advance directives for health care work for them; and are disadvantaged by the fact that many physicians and attorneys are unaware of the specific issues that typically enter into the decisions that a person with mental illness may make for himself when in crisis;

d. The provision by statute of advanced directives for mental health care will assure respect for the rights of patients with mental illness with respect to the provision of mental health services and their decision-making in regard thereto; and

e. In order to permit a person with mental illness to execute an advance directive that specifies preferences for mental health services in the event that the declarant is subsequently determined to lack decision-making capacity, the Legislature hereby enacts the "New Jersey Advance Directives for Mental Health Care Act."

C.26:2H-104 Definitions relative to advance directives for mental health care.

3. As used in this act:

"Adult" means an individual 18 years of age or older.

"Advance directive for mental health care" or "advance directive" means a writing executed in accordance with the requirements of this act. An "advance directive" may include a proxy directive or an instruction directive, or both.

"Decision-making capacity" means a patient's ability to understand and appreciate the nature and consequences of mental health care decisions, including the benefits and risks of each, and alternatives to any proposed mental health care, and to reach an informed decision. A patient's decision-making capacity is evaluated relative to the demands of a particular mental health care decision.

"Declarant" means a competent adult who executes an advance directive for mental health care.

"Domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

"Instruction directive" means a writing which provides instructions and direction regarding the declarant's wishes for mental health care in the event that the declarant subsequently lacks decision-making capacity.

"Mental health care decision" means a decision to accept or refuse any treatment, service or procedure used to diagnose, treat or care for a patient's mental condition. "Mental health care

decision" also means a decision to accept or refuse the services of a particular mental health care professional or psychiatric facility, including a decision to accept or to refuse a transfer of care.

"Mental health care professional" means an individual licensed or certified by this State to provide or administer mental health care in the ordinary course of business or practice of a profession.

"Mental health care representative" means the individual designated by a declarant pursuant to the proxy directive part of an advance directive for mental health care for the purpose of making mental health care decisions on the declarant's behalf, and includes an individual designated as an alternate mental health care representative who is acting as the declarant's mental health care representative in accordance with the terms and order of priority stated in an advance directive for mental health care.

"Patient" means an individual who is under the care of a mental health care professional.

"Proxy directive" means a writing which designates a mental health care representative in the event that the declarant subsequently lacks decision-making capacity.

"Psychiatric facility" means a State psychiatric facility listed in R.S.30:1-7, a county psychiatric hospital or the psychiatric unit of a county hospital, a short-term care facility, special psychiatric hospital or psychiatric unit of a general hospital or other health care facility licensed by the Department of Health and Senior Services pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), or a hospital or community-based mental health center or other entity licensed or funded by the Department of Human Services to provide community-based mental health services.

"Responsible mental health care professional" means a person licensed or certified by the State to provide or administer mental health care who is selected by, or assigned to, the patient and has primary responsibility for the care and treatment of the patient.

"State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

C.26:2H-105 Execution, reaffirmation, modification, revocation, suspension of advance directive for mental health care.

4. a. A declarant may execute, reaffirm, modify, revoke or suspend an advance directive for mental health care at any time, except as provided in subsection f. of section 5 of this act.

(1) The advance directive shall be signed and dated by, or at the direction of, the declarant in the presence of at least one subscribing adult witness, who shall attest that the declarant is of sound mind and free of duress and undue influence.

(2) The advance directive may be supplemented by a video or audio tape recording.

b. The following persons shall not act as a witness to the execution of an advance directive for mental health care:

(1) a designated mental health care representative; and

(2) the responsible mental health care professional responsible for, or directly involved with, the patient's care at the time that the advance directive is executed.

c. A person shall not act as a sole witness to the execution of an advance directive for mental health care if that person is:

(1) related to the declarant by blood, marriage or adoption, or is the declarant's domestic partner or otherwise shares the same home with the declarant;

(2) entitled to any part of the declarant's estate by will or by operation of law at the time that the advance directive is executed; or

(3) an operator, administrator or employee of a rooming or boarding house or a residential health care facility in which the declarant resides.

C.26:2H-106 Validity of advance directive for mental health care, reaffirmation, modification, revocation.

5. a. (1) An advance directive for mental health care shall be deemed to be valid for an indefinite period of time if it does not include an expiration date, subject to a declarant's right to modify, revoke or suspend the advance directive in accordance with the provisions of this section.

(2) If an advance directive includes an expiration date that occurs during a period of time in

which the declarant has been determined by the responsible mental health care professional to lack the capacity to make a particular mental health care decision, the advance directive shall remain in effect until the declarant is determined by the responsible mental health care professional to have regained the capacity to make a particular mental health care decision.

b. A declarant may state in an advance directive for mental health care, including a proxy directive or an instruction directive, or both, whether the declarant wishes to be able to modify, revoke or suspend the advance directive after it has become operative pursuant to section 7 of this act; however, the failure to include such a statement in the advance directive shall not be construed to prevent the declarant from modifying, revoking or suspending the advance directive under the circumstances described in this subsection.

c. A declarant may reaffirm or modify an advance directive for mental health care, including a proxy directive or an instruction directive, or both, subject to the provisions of subsection b. of this section. The reaffirmation or modification shall be made in accordance with the requirements for execution of an advance directive for mental health care pursuant to section 4 of this act.

d. A declarant may revoke an advance directive for mental health care, including a proxy directive or an instruction directive, or both, subject to the provisions of subsection b. of this section, by the following means:

(1) notification, orally or in writing, to the mental health care representative or mental health care professional, or other reliable witness, or by any other act evidencing an intent to revoke the document; or

(2) execution of a subsequent proxy directive or instruction directive, or both, in accordance with section 4 of this act.

e. Designation of the declarant's spouse as mental health care representative shall be revoked upon divorce or legal separation, and designation of the declarant's domestic partner as mental health care representative shall be revoked upon termination of the declarant's domestic partnership, unless otherwise specified in the advance directive.

f. An inpatient in a psychiatric facility may modify, revoke or suspend an advance directive for mental health care, including a proxy directive or an instruction directive, or both, by any of the means stated in paragraph (1) of subsection d. of this section, unless a responsible mental health professional determines, in accordance with the provisions of section 8 of this act, that the patient lacks decision-making capacity to make the decision to modify, revoke or suspend the advance directive. A patient who has modified, revoked or suspended an advance directive may reinstate that advance directive by oral or written notification to the mental health care representative or mental health care professional of an intent to reinstate the advance directive.

g. Reaffirmation, modification or revocation of an advance directive for mental health care is effective upon communication to any person capable of transmitting the information, including the mental health care representative or mental health care professional responsible for the patient's care.

#### C.26:2H-107 Execution of proxy directive.

6. a. A declarant may execute a proxy directive, pursuant to the requirements of section 4 of this act, designating a competent adult to act as the declarant's mental health care representative.

(1) A competent adult, including, but not limited to, a declarant's spouse, domestic partner, adult child, parent or other family member, friend, religious or spiritual advisor, or other person of the declarant's choosing, may be designated as a mental health care representative.

(2) An operator, administrator or employee of a psychiatric facility in which the declarant is a patient or resident shall not serve as the declarant's mental health care representative unless the operator, administrator or employee is related to the declarant by blood, marriage, domestic partnership or adoption.

This restriction shall not apply to a mental health care professional if that individual does not serve as the patient's responsible mental health care professional or other provider of mental health care services to the patient and the patient's mental health care representative at the same time.

(3) A declarant may designate one or more alternate mental health care representatives, listed in order of priority. In the event that the primary designee is unavailable, unable or unwilling to serve as mental health care representative, or is disqualified from such service pursuant to this section or any other law, the next designated alternate shall serve as mental health care representative. In the event that the primary designee subsequently becomes available and able to serve as mental health care representative, the primary designee may, insofar as then practicable, serve as mental health care representative.

(4) A declarant may direct the mental health care representative to consult with specified individuals, including alternate designees, family members and friends, in the course of the decision-making process.

(5) A declarant shall state the limitations, if any, to be placed upon the authority of the mental health care representative.

(6) If a declarant explicitly authorizes the mental health care representative to consent to the declarant's admission to a psychiatric facility, the declarant shall separately initial each paragraph in which that authorization is granted at the time that the proxy directive is signed and witnessed.

b. A declarant may execute an instruction directive, pursuant to the requirements of section 4 of this act, which specifies preferences for mental health services in the event that the declarant is subsequently determined to lack decision-making capacity.

(1) The instruction directive may include: a statement of the declarant's general mental health care philosophy and objectives; the declarant's specific wishes regarding the provision, withholding or withdrawal of any form of mental health care; or both.

(2) The declarant's specific wishes regarding the provision, withholding or withdrawal of any form of mental health care may include:

(a) the identification of mental health care professionals and programs and psychiatric facilities that the declarant would prefer to provide mental health services;

(b) consent to admission to a psychiatric facility for up to a specified number of days;

(c) a refusal to accept specific types of mental health treatment, including medications;

(d) a statement of medications preferred by the declarant for mental health treatment;

(e) a statement of the preferred means of crisis intervention or other preferences for mental health treatment; and

(f) additional instructions or information concerning mental health care.

(3) An instruction directive may, but need not, be executed contemporaneously with, or be attached to, a proxy directive.

#### C.26:2H-108 Operative date of advance directive for mental health care.

7. a. An advance directive for mental health care shall become operative:

(1) when it is transmitted to the responsible mental health care professional or the psychiatric facility; and it is determined pursuant to section 8 of this act that the patient lacks capacity to make a particular mental health care decision; or

(2) at an earlier date if stipulated by the declarant in the advance directive.

b. Treatment decisions pursuant to an advance directive for mental health care shall not be made and implemented until there has been a reasonable opportunity to establish, and where appropriate confirm, a reliable diagnosis and prognosis for the patient.

#### C.26:2H-109 Determination of patient's decision-making capacity.

8. a. The responsible mental health care professional shall determine whether the patient lacks the capacity to make a particular mental health care decision. The determination shall: be stated in writing; include the responsible mental health care professional's opinion concerning the nature, cause, extent and probable duration of the patient's incapacity; and be made a part of the patient's medical records.

b. The responsible mental health care professional's determination of a lack of decision-making capacity shall be confirmed by one or more mental health care professionals. The opinion of the confirming mental health care professional shall be stated in writing and made a part of the patient's medical records in the same manner as that of the responsible mental health care professional.

c. A mental health care professional designated by the patient's advance directive as a mental health care representative shall not make the determination of a lack of decision-making capacity.

d. The responsible mental health care professional shall inform the patient, if the patient has any ability to comprehend that he has been determined to lack decision-making capacity, and the mental health care representative that:

(1) the patient has been determined to lack decision-making capacity to make a particular mental health care decision;

(2) each has the right to contest this determination; and

(3) each may have recourse to the dispute resolution process established by the psychiatric facility pursuant to section 14 of this act. Notice to the patient and the mental health care representative shall be documented in the patient's medical records.

e. A determination of lack of decision-making capacity under this act shall be solely for the purpose of implementing an advance directive for mental health care in accordance with the provisions of this act, and shall not be construed as a determination of a patient's incapacity or incompetence for any other purpose.

f. For the purposes of this section, a determination that a patient lacks decision-making capacity shall be based upon, but need not be limited to, an evaluation of the patient's ability to understand and appreciate the nature and consequences of a particular mental health care decision, including the benefits and risks of, and alternatives to, the proposed mental health care, and to reach an informed decision.

g. For the purposes of this section, "mental health care decision" includes a decision to modify, revoke or suspend an advance directive for mental health care as provided in subsection f. of section 5 of this act.

#### C.26:2H-110 Authority of mental health care representative.

9. a. If it has been determined that the patient lacks decision-making capacity, a mental health care representative shall have authority to make mental health care decisions on behalf of the patient.

(1) The mental health care representative shall act in good faith and within the bounds of the authority granted by the advance directive for mental health care and by this act.

(2) The mental health care representative may consent to the patient's admission to a psychiatric facility only as authorized pursuant to paragraph (6) of subsection a. of section 6 of this act.

b. If a different individual has been appointed as the patient's legal guardian, the mental health care representative shall retain legal authority to make mental health care decisions on the patient's behalf, unless the terms of the legal guardian's court appointment or other court decree provide otherwise.

c. The conferral of legal authority on the mental health care representative shall not be construed to impose liability upon that person for any portion of the patient's health care costs.

d. An individual designated as a mental health care representative or as an alternate mental health care representative may decline to serve in that capacity.

e. The mental health care representative shall exercise the patient's right to be informed of the patient's mental health condition, prognosis and treatment options, and to give informed consent to, or refusal of, health care.

f. In the exercise of these rights and responsibilities, the mental health care representative shall seek to make the mental health care decision that the patient would have made if the patient possessed decision-making capacity under the circumstances, or, when the patient's wishes cannot adequately be determined, shall make a mental health care decision in the best interests of the patient.

g. Departure from the decisions of a mental health care representative shall be permitted only if the responsible mental health care professional determines that compliance with those decisions would:

(1) violate the accepted standard of mental health care or treatment under the circumstances of the patient's mental health condition;

(2) require the use of a form of care or treatment that is not available to the mental health

care professional responsible for the provision of mental health services to the patient;

- (3) violate a court order or provision of statutory law; or
- (4) endanger the life or health of the patient or another person.

C.26:2H-111 Additional responsibilities of responsible mental health care professional.

10. In addition to any rights and responsibilities recognized or imposed by or pursuant to this act, or by any other law, a mental health care professional shall have the following responsibilities:

a. The responsible mental health care professional shall make an affirmative inquiry of the patient, the patient's family or others, as appropriate under the circumstances, concerning the existence of an advance directive for mental health care. The responsible mental health care professional shall note in the patient's medical records whether or not an advance directive exists, and the name of the patient's mental health care representative, if any, and shall attach a copy of the advance directive to the patient's medical records. The responsible mental health care professional shall document in the same manner the reaffirmation, modification, revocation or suspension of an advance directive, if he has knowledge of such action.

b. In the event of a transfer of a patient's care:

(1) The responsible mental health care professional shall assure the timely transfer of the patient's medical records, including a copy of the patient's advance directive for mental health care; and

(2) A mental health care professional other than the responsible mental health care professional, who is responsible for the patient's care, shall cooperate in effecting an appropriate, respectful and timely transfer of care, and to assure that the patient is not abandoned or treated disrespectfully.

C.26:2H-112 Discussion of patient's mental health condition.

11. a. (1) The responsible mental health care professional, the patient to the extent possible, the mental health care representative, and, when appropriate, any additional mental health care professional responsible for the patient's care, shall discuss the nature and consequences of the patient's mental health condition, and the risks, benefits and burdens of the proposed mental health care and its alternatives. Except as provided in paragraph (2) of subsection b. of this section, the responsible mental health care professional shall obtain informed consent for, or refusal of, health care from the mental health care representative.

(2) The decision-making process shall allow, as appropriate under the circumstances, adequate time for the mental health care representative to understand and deliberate about all relevant information before a treatment decision is implemented.

b. (1) The mental health care representative and the responsible mental health care professional shall seek to promote the patient's capacity for effective participation.

(2) Once decision-making authority has been conferred upon a mental health care representative pursuant to an advance directive for mental health care, if the patient is subsequently found to possess adequate decision-making capacity with respect to a particular mental health care decision, the patient shall have legal authority to make that decision. In those circumstances, the mental health care representative may continue to participate in the decision-making process in an advisory capacity, unless the patient objects.

c. If a mental health care representative is authorized to consent to the patient's admission to a psychiatric facility pursuant to paragraph (6) of subsection a. of section 6 of this act and the responsible mental health care professional has obtained informed consent for admission from the mental health care representative, the responsible mental health professional may admit the patient based upon the responsible mental health professional's:

(1) thorough investigation of the patient's psychiatric and psychological history, diagnosis and need for care or treatment, and expressed wishes;

(2) written determination that the patient is in need of an inpatient evaluation or would benefit from the care or treatment of a mental, emotional or other personality disorder in an inpatient setting, and that the evaluation, care or treatment cannot be accomplished in a less restrictive setting; and

(3) documentation in the patient's medical records of the responsible mental health professional's findings and recommendations with regard to the patient's care or treatment.

d. In acting to implement a patient's wishes pursuant to an advance directive for mental health care, the mental health care representative shall give priority to the patient's instruction directive, and may also consider, as appropriate and necessary, the following forms of evidence of the patient's wishes:

- (1) the patient's contemporaneous expressions, including nonverbal expressions;
- (2) other reliable sources of information, including the mental health care representative's personal knowledge of the patient's values, preferences and goals; and
- (3) reliable oral or written statements previously made by the patient, including, but not limited to, statements made to other persons.

e. If the instruction directive, in conjunction with other evidence of the patient's wishes, does not provide, in the exercise of reasonable judgment, clear direction as applied to the patient's mental health condition and the treatment alternatives, the mental health care representative shall exercise reasonable discretion, in good faith, to effectuate the provisions, intent, and spirit of the instruction directive and other evidence of the patient's wishes.

f. Subject to the provisions of this act, and unless otherwise stated in the advance directive, if the patient's wishes cannot be adequately determined, then the mental health care representative shall make a mental health care decision in the patient's best interests.

#### C.26:2H-113 Instruction directive legally operative, conditions.

12. a. If the patient has executed an instruction directive but has not designated a mental health care representative, or if neither the designated mental health care representative or any alternate designee is able or available to serve, the instruction directive shall be legally operative. If the instruction directive provides clear and unambiguous guidance under the circumstances, it shall be honored in accordance with its specific terms by a legally appointed guardian, if any, family member, mental health care professional and psychiatric facility involved with the patient's mental health care, and any other person acting on the patient's behalf, except as provided in subsection c. of this section.

b. If the instruction directive is, in the exercise of reasonable judgment, not specific to the patient's mental health condition and the treatment alternatives, the responsible mental health care professional, in consultation with a legally appointed guardian, if any, family member, or other person acting on the patient's behalf, shall exercise reasonable judgment to effectuate the wishes of the patient, giving full weight to the terms, intent and spirit of the instruction directive.

c. Departure from the specific provisions of the instruction directive shall be permitted only if the responsible mental health care professional determines that compliance with those terms or provisions would:

- (1) violate the accepted standard of mental health care or treatment under the circumstances of the patient's mental health condition;
- (2) require the use of a form of care or treatment that is not available to the mental health care professional responsible for the provision of mental health services to the patient;
- (3) violate a court order or provision of statutory law; or
- (4) endanger the life or health of the patient or another person.

#### C.26:2H-114 Additional rights, responsibilities of psychiatric facility.

13. In addition to any rights and responsibilities recognized or imposed by or pursuant to this act, or any other law, a psychiatric facility shall have the following responsibilities:

a. A psychiatric facility shall adopt such policies and practices as are necessary to provide for routine inquiry, at the time of admission, and at such other times as are appropriate under the circumstances, concerning the existence and location of an advance directive for mental health care.

b. A psychiatric facility shall adopt such policies and practices as are necessary to provide appropriate informational materials concerning advance directives for mental health care to all interested patients and their families and mental health care representatives, and to assist patients

interested in discussing and executing an advance directive for mental health care.

c. In situations in which a transfer of care is necessary, including a transfer for the purpose of effectuating a patient's wishes pursuant to an advance directive for mental health care, a psychiatric facility shall, in consultation with the responsible mental health care professional, take all reasonable steps to effect the appropriate, respectful and timely transfer of the patient to the care of an alternative mental health care professional or psychiatric facility, as necessary, and shall assure that the patient is not abandoned or treated disrespectfully. In those circumstances, a psychiatric facility shall assure the timely transfer of the patient's medical records, including a copy of the patient's advance directive for mental health care.

d. A psychiatric facility shall establish procedures and practices for dispute resolution in accordance with section 14 of this act.

e. A psychiatric facility shall adopt such policies and practices as are necessary to: inform mental health care professionals of their rights and responsibilities under this act; assure that those rights and responsibilities are understood; and provide a forum for discussion and consultation regarding the requirements of this act.

#### C.26:2H-115 Procedures, practices for resolving disagreements.

14. a. In the event of disagreement among the patient, mental health care representative and responsible mental health care professional concerning the patient's decision-making capacity or the appropriate interpretation and application of the provisions of an advance directive for mental health care to the patient's course of treatment, the parties may seek to resolve the disagreement by means of procedures and practices established by the psychiatric facility, including but not limited to, consultation with an institutional ethics committee, or with a person designated by the psychiatric facility for this purpose, or may seek resolution by a court of competent jurisdiction.

b. A mental health care professional involved in the patient's care, other than the responsible mental health care professional, or an administrator of a psychiatric facility may also invoke the dispute resolution process established by the psychiatric facility to seek to resolve a disagreement concerning the patient's decision-making capacity or the appropriate interpretation and application of the provisions of an advance directive for mental health care.

#### C.26:2H-116 Construction of act; severability.

15. The provisions of this act shall not be construed to supersede any court order relating to, or the provisions of any other statute governing, commitment or admission to a psychiatric facility or the provision of mental health care, including, but not limited to, P.L.1987, c.116 (C.30:4-27.1 et seq.). Any conflict between a court order or the provisions of another statute and the provisions of an advance directive for mental health care, which renders those provisions of the advance directive invalid, shall not be deemed to invalidate any other provisions of the advance directive that do not conflict with the court order or statute.

#### C.26:2H-117 Rules, regulations relative to psychiatric facilities operated by DHSS.

16. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Health and Senior Services, in consultation with the Commissioner of Human Services, shall adopt rules and regulations, with respect to psychiatric facilities licensed by the Department of Health and Senior Services, to:

a. provide for the annual reporting by those psychiatric facilities to the Department of Health and Senior Services, and the gathering of such additional data, as is reasonably necessary to oversee and evaluate the implementation of this act; except that the commissioner shall seek to minimize the burdens of record-keeping imposed by the rules and regulations and ensure the appropriate confidentiality of patient records; and

b. require those psychiatric facilities to adopt policies and practices designed to:

(1) make routine inquiry, at the time of admission and at such other times as are appropriate under the circumstances, concerning the existence and location of an advance directive for mental health care;

(2) provide appropriate informational materials concerning advance directives for mental health care, including information about the registry of advance directives for mental health care



established or designated pursuant to section 17 of this act, to all interested patients and their families and mental health care representatives, and to assist patients interested in discussing and executing an advance directive for mental health care, as well as to encourage declarants to periodically review their advance directives for mental health care as needed;

(3) inform mental health care professionals of their rights and responsibilities under this act, to assure that the rights and responsibilities are understood, and to provide a forum for discussion and consultation regarding the requirements of this act; and

(4) otherwise comply with the provisions of this act.

C.30:4-177.59 Rules, regulations relative to psychiatric facilities operated by DHS.

17. In accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Human Services, in consultation with the Commissioner of Health and Senior Services, shall:

a. adopt rules and regulations, with respect to psychiatric facilities operated by the Department of Human Services, to:

(1) provide for the annual reporting by those psychiatric facilities to the Department of Human Services, and the gathering of such additional data, and the sharing of such reported information and additional data by the Department of Human Services with the Department of Health and Senior Services, as is reasonably necessary to oversee and evaluate the implementation of P.L.2005, 233 (C.26:2H-102 et al.); except that the commissioner shall seek to minimize the burdens of record-keeping imposed by the rules and regulations and ensure the appropriate confidentiality of patient records; and

(2) require those psychiatric facilities to adopt policies and practices designed to:

(a) make routine inquiry, at the time of admission and at such other times as are appropriate under the circumstances, concerning the existence and location of an advance directive for mental health care;

(b) provide appropriate informational materials concerning advance directives for mental health care, including information about the registry of advance directives for mental health care established or designated pursuant to subsection b. of this section, to all interested patients and their families and mental health care representatives, and to assist patients interested in discussing and executing an advance directive for mental health care, as well as to encourage declarants to periodically review their advance directives for mental health care as needed;

(c) inform mental health care professionals of their rights and responsibilities under P.L.2005, 233 (C.26:2H-102 et al.), to assure that the rights and responsibilities are understood, and to provide a forum for discussion and consultation regarding the requirements of P.L.2005, 233 (C.26:2H-102 et al.); and

(d) otherwise comply with the provisions of P.L.2005, 233 (C.26:2H-102 et al.).

b. adopt rules and regulations to establish or designate a registry of advance directives for mental health care, which rules and regulations include procedures for accessing the registry

C.26:2H-118 Joint evaluation, report to Governor, Legislature.

18. The Department of Health and Senior Services and the Department of Human Services shall jointly evaluate the implementation of this act and report to the Governor and the Legislature, including recommendations for any changes deemed necessary, within five years after the effective date of this act.

C.26:2H-119 Immunity from criminal, civil liability.

19. a. A mental health care representative shall not be subject to criminal or civil liability for any actions performed in good faith and in accordance with the provisions of this act to carry out the terms of an advance directive for mental health care.

b. A mental health care professional shall not be subject to criminal or civil liability, or to discipline by the psychiatric facility or the respective State licensing board for professional misconduct, for any actions performed to carry out the terms of an advance directive for mental health care in good faith and in accordance with: the provisions of this act; any rules and regulations adopted by the Commissioner of Health and Senior Services or the Commissioner

of Human Services pursuant to this act; and accepted professional standards.

c. A psychiatric facility shall not be subject to criminal or civil liability for any actions performed in good faith and in accordance with the provisions of this act to carry out the terms of an advance directive for mental health care.

C.26:2H-120 Construction of act with advance directive for health care.

20. Nothing in this act shall be construed to impair the legal force and effect of an advance directive for health care executed pursuant to P.L.1991, c.201 (C.26:2H-53 et seq.) either prior to or after the enactment of this act.

C.26:2H-121 Absence of directive, no presumption created.

21. The absence of an advance directive for mental health care shall create no presumption with respect to a patient's wishes regarding the provision, withholding or withdrawing of any form of health care. The provisions of this act shall not apply to persons who have not executed an advance directive for mental health care.

C.26:2H-122 Existing rights, obligations unaffected under health insurance programs.

22. The execution of an advance directive for mental health care pursuant to this act shall not in any manner affect, impair or modify the terms of, or rights or obligations created under, any existing policy of health insurance, life insurance or annuity, or governmental benefits program. No health care provider, and no health benefits plan, insurer or governmental authority, shall exclude from health care services or deny coverage to any individual because that individual has executed or has not executed an advance directive for mental health care. The execution, or non-execution, of an advance directive for mental health care shall not be made a condition of coverage under any policy of health insurance, life insurance or annuity, or governmental benefits program.

C.26:2H-123 Validity of directive executed out-of-State.

23. An advance directive for mental health care executed under the laws of another state in compliance with the laws of that state or the State of New Jersey is validly executed for the purposes of this act. An advance directive for mental health care executed in a foreign country in compliance with the laws of that country or the State of New Jersey, and not contrary to the public policy of this State, is validly executed for the purposes of this act.

C.26:2H-124 Priority of provisions of act.

24. a. (1) To the extent that any of the provisions of this act are inconsistent with P.L.2000, c.109 (C.46:2B-8.1 et seq.) concerning the designation of a mental health care representative, the provisions of this act shall have priority over those of P.L.2000, c.109.

(2) Durable powers of attorney for health care executed pursuant to P.L.2000, c.109 prior to the effective date of this act shall have the same legal force and effect as if they had been executed in accordance with the provisions of this act.

b. Nothing in this act shall be construed to impair the rights of emancipated minors under existing law.

C.26:2H-125 Intentional disregard for act, profession misconduct; fines; fourth degree crime for certain acts relative to advance directive.

25. a. A mental health care professional who intentionally fails to act in accordance with the requirements of this act is subject to discipline for professional misconduct pursuant to section 8 of P.L.1978, c.73 (C.45:1-21).

b. A psychiatric facility that intentionally fails to act in accordance with the requirements of this act shall be subject to a fine of not more than \$1,000 for each offense. For the purposes of this subsection, each violation shall constitute a separate offense. Penalties for violations of this act shall be recovered in a summary civil proceeding, brought in the name of the State in a court of competent jurisdiction pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

c. It shall be a crime of the fourth degree for a person to:

(1) willfully conceal, cancel, deface, obliterate or withhold personal knowledge of an advance directive for mental health care, or a modification, revocation or suspension thereof, without the declarant's consent;

(2) falsify or forge an advance directive for mental health care of another person, or a modification, revocation or suspension thereof;

(3) coerce or fraudulently induce the execution of an advance directive for mental health care, or a modification, revocation or suspension, thereof; or

(4) require or prohibit the execution of an advance directive for mental health care, or a modification, revocation or suspension thereof, as a condition of coverage under any policy of health insurance, life insurance or annuity, or governmental benefits program, or as a condition of the provision of health care.

d. The sanctions provided in this section shall not be construed to repeal any sanctions applicable under other law.

26. This act shall take effect on the 180th day after enactment, except that the Commissioners of Health and Senior Services and Human Services may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

Approved September 22, 2005.