

## **PART X. ADVANCE DIRECTIVES FOR MENTAL HEALTH TREATMENT**

### *§221. Definitions*

As used in this Part:

(1) "Advance directive for mental health treatment" or "advance directive" means a written document voluntarily executed by a principal in accordance with the requirements of this Part and includes a declaration or the appointment of a representative or both.

(2) "Declaration for mental health treatment" or "declaration" means a written document executed by a principal, in accordance with the requirements of this Part, setting forth preferences or instructions regarding mental health treatment in the event the principal is determined to be incapable and mental health treatment is necessary.

(3) "Director" or "superintendent" means a person in charge of a treatment facility or his deputy.

(4) "Incapable" means that, due to any infirmity, the principal is currently unable to make or to communicate reasoned decisions regarding the principal's mental health treatment.

(5) "Mental health treatment" shall have the same meaning as provided in R.S. 28:2(28) and includes but is not limited to electroshock therapy, treatment of mental illness with psychoactive medication, admission to and retention in a treatment facility, and outpatient services. However, "mental health treatment" shall not include admission to or retention in a mental health treatment facility for a period in excess of fifteen days.

(6) "Outpatient services" means treatment for a mental or emotional disorder that is obtained on an outpatient basis.

(7) "Physician" means an individual licensed to practice medicine by the Louisiana State Board of Medical Examiners.

(8) "Principal" means an individual who has executed an advance directive for mental health treatment.

(9) "Provider" means a mental health treatment provider.

(10) "Psychologist" means a clinical psychologist who is licensed to practice psychology in Louisiana.

(11) "Representative" means a competent adult validly appointed under R.S. 28:223 to make mental health treatment decisions for a principal and also means an alternative representative.

(12) "Treating physician" means the physician who has primary responsibility for the mental health treatment of the principal.

(13) "Treatment facility" shall have the same meaning as provided in R.S. 28:2(29)(a).

Acts 2001, No. 755, §1.

*§222. Individuals who may make an advance directive for mental health treatment; period of validity*

A. An adult who is not incapable may make an advance directive for mental health treatment. The preferences or instructions may include consent to or refusal of mental health treatment.

B. An advance directive for mental health treatment shall continue in effect for a period of five years or until revoked, whichever occurs first. The authority of a named representative and any alternative representative named in the advance directive for mental health treatment shall continue in effect as long as the advance directive appointing the representative is in effect or until the representative has withdrawn.

C. If an advance directive for mental health treatment has been delivered to the principal's treating physician or other provider and the principal has been determined to be incapable pursuant to R.S. 28:226, at the expiration of five years after its execution, it shall remain effective until the principal is no longer incapable.

Acts 2001, No. 755, §1.

*§223. Designation of representative for decisions about mental health treatment*

An advance directive for mental health treatment may designate a competent adult to act as a representative to make decisions about mental health treatment. An alternative representative may also be designated to act as representative if the original designee is unable or unwilling to act at any time. A representative who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the principal only when the principal is determined to be incapable pursuant to R.S. 28:226. The decisions shall be consistent with any desires the principal has expressed in the declaration.

Acts 2001, No. 755, §1.

*§224. Execution of advance directive; witnesses; mental status examination*

An advance directive for mental health treatment shall be valid only if it is signed by the principal and two competent witnesses and accompanied by a written mental status examination performed by a physician or psychologist attesting to the principal's ability to make reasoned decisions concerning his mental health treatment. The witnesses shall attest that the principal is known to them, signed the advance directive in their presence, and does not appear to be unable to make reasoned decisions concerning his mental health treatment or under duress, fraud, or undue influence. Individuals specified in R.S. 28:234 may not act as witnesses. In determining the principal's ability, the physician or psychologist should consider (1) whether the principal demonstrates an awareness of the nature of his illness and situation; (2) whether the principal demonstrates an understanding of treatment and the risks, benefits, and alternatives; and (3) whether the principal communicates a clear choice regarding treatment that is a reasoned one, even though it may not be in the person's best interest.

Acts 2001, No. 755, §1.

*§225. Operation of advance directive; physician or provider to act in accordance with advance directive*

A. An advance directive shall become operative when it is delivered to the principal's treating physician or other mental health treatment provider and shall remain valid until revoked or expired.

B. The treating physician or provider shall act in accordance with an operative advance directive when the principal has been found to be incapable pursuant to R.S. 28:226. Notwithstanding the operative advance directive, the treating physician or provider shall endeavor to communicate with the principal regarding his proposed mental health treatment and even continue to obtain the principal's informed consent to all mental health treatment decisions if the principal is capable of providing informed consent or refusal.

Acts 2001, No. 755, §1.

*§226. Determination of incapacity*

A. The incapacity of a principal shall be established by two physicians who have personally examined the principal, determined that he is incapable, and signed a written certificate. The written certificate shall be made part of the principal's medical record.

B. The determination that the principal has regained his capacity while in the treatment facility shall be made by any licensed physician and entered in the principal's medical record. The principal automatically regains his capacity when he is discharged from the treatment facility.

Acts 2001, No. 755, §1.

*§227. Scope of authority of representative; powers and duties; limitation on liability*

A. The representative shall not have the authority to make mental health treatment decisions unless the principal is determined to be incapable as provided in R.S. 28:226.

B. The representative shall not be, as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal.

C. Except to the extent the right is limited by the advance directive or any federal law, a representative shall have the same right as the principal to receive information regarding both proposed and administered mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment. This representative's right of access to the principal's mental health treatment information shall not waive any evidentiary privilege.

D. In exercising authority under the advance directive, the representative shall act consistently with the expressed desires of the principal. If the principal's desires are not expressed in the advance directive and not otherwise known by the representative, the representative shall act in what the representative in good faith believes to be the best interests of the principal.

E. A representative shall not be subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to an advance directive for mental health treatment.

Acts 2001, No. 755, §1.

*§228. Prohibitions against requiring an individual to execute or refrain from executing advance directive*

An individual shall not be required to execute or to refrain from executing an advance directive for mental health treatment as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of discharge from a treatment facility.

Acts 2001, No. 755, §1.

*§229. Advance directive for mental health treatment; part of medical record; physician or provider compliance; withdrawal of physician or provider*

A. Upon being presented with an advance directive for mental health treatment, a physician or other provider shall make the advance directive a part of the principal's medical record. When acting under authority of an advance directive, a physician or provider shall comply with it to the fullest extent possible, consistent with the appropriate standard of care, reasonable medical practice, the availability of treatments requested, and applicable law. If the physician or other provider is unable or unwilling at any time to carry out preferences or instructions contained in an advance directive for mental health treatment or the decisions of the representative, the physician or provider may withdraw from providing treatment to the principal.

B. Such withdrawal shall be consistent with the continuity of the appropriate standard of care by the withdrawing physician or provider ensuring that another physician or provider agrees to treat the principal prior to the effectiveness of his withdrawal. Upon withdrawal, a physician or provider shall promptly notify the principal and the representative and document the notification in the principal's medical record. A withdrawal of a physician or provider pursuant to the provisions of this Section shall not be construed to constitute patient abandonment.

C. For the purposes of this Section, "physician" means the treating physician or any other physician proposing or administering mental health treatment to the principal.

Acts 2001, No. 755, §1.

*§230. Disregarding advance directives; circumstances*

A. The physician or provider may subject a principal determined to be incapable pursuant to R.S. 28:226 to mental health treatment in a manner contrary to the principal's wishes as expressed in an advance directive for mental health treatment only:

(1) In case of an emergency when the principal's instructions have not been effective in reducing the severity of the behavior that has caused the emergency. An emergency occurs when the principal presents an imminent and significant danger of physical harm to himself or others.

(2) When the treating physician determines that psychotropic medication is essential and after compliance with the following procedures:

(a) When a principal's advance directive or his representative refuses medication that the treating physician believes is essential, the director of the treatment facility shall conduct an administrative review to determine whether the principal should be forcibly medicated contrary to his wishes.

(b) The director shall provide written notice to the principal, his representative, if any, and an attorney from the Mental Health Advocacy Service (MHAS) no less than forty-eight hours, excluding weekends and holidays, before the administrative review. The notice shall include the time and place of the administrative review, the diagnosis, and reasons why the physician believes the medication is necessary. The principal's expressed wishes shall be followed pending the administrative review. The administrative review shall be held no later than seventy-two hours after the time that the MHAS has been notified, excluding weekends and holidays, unless the patient and the facility agree to a continuance.

(c) The MHAS attorney shall represent the principal at the administrative review unless the principal chooses someone else to represent him.

(d) A principal may be medicated contrary to the wishes expressed in his advance directive if, based on a review of the advance directive and the reasons stated therein, the patient's medical chart, a personal examination of the patient, the wishes of the principal's representative, if any, and the recommendations of the treating physician, the director determines that the medication is medically essential. The director shall consider the following criteria in making that decision:

(i) The patient is mentally ill and is dangerous to himself or others or gravely disabled without the medication.

- (ii) The medication is the least restrictive alternative.
- (iii) The medication is the most medically appropriate.
- (iv) The medication offers a significant likelihood of improvement in the patient's condition or a speedier recovery and his condition is of such severity that unless the medication is administered the patient's medical condition is very unlikely to improve.
- (v) The expected benefits from the medication outweigh the known risks and potential side effects.
- (vi) All other reasonable alternatives, including those set forth in the advance directive, have been exhausted.
- (e) The director shall require the attendance of the patient at the hearing unless extraordinary circumstances exist precluding his attendance. The principal and the hospital have the right to present evidence and cross-examine witnesses.
- (f) The director's decision shall be in writing, shall address each of the criteria, and shall give reasons for the decision. All of the criteria in Subparagraph (d) of this Paragraph shall be met in order to medicate the principal against his expressed wishes.
- (g) The director's decision to administer medication contrary to the advance directive should specify the length of time the decision to medicate the principal is to remain valid. The decision shall be effective for no more than sixty days or termination of the principal's stay at the treatment facility, whichever occurs first, unless a new request for an administrative review is made prior to the expiration of the original order and the patient is still hospitalized. If at any time the director believes that the medication is no longer necessary, he shall order the measures discontinued.
- (h) The director shall provide the principal, his representative, if any, and the attorney from the Mental Health Advocacy Service with a copy of the decision.
- (i) For purposes of this Section, the director of a treatment facility must be a psychiatrist who is not involved in providing medication to the patient. If the director does not meet those criteria, he shall designate a psychiatrist who is not involved in the medication of the patient.

B. An advance directive shall not limit the authority provided in R.S. 28:2 et seq., to take a principal into protective custody or to involuntarily admit or commit a principal to a treatment facility.

C. An advance directive shall not authorize admission to or retention in a mental health treatment facility for a period in excess of fifteen days.

Acts 2001, No. 755, §1.

*§231. Revocation of advance directive*

An advance directive for mental health treatment may be revoked in whole or in part at any time by the principal if the principal is not incapable. Revocation shall be effective when a principal who is not capable communicates the revocation to the treating physician or other provider. The treating physician or other provider shall note the revocation as part of the principal's medical record.

Acts 2001, No. 755, §1.

*§232. Limitations on liability of physician or provider*

A physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of an advance directive for mental health treatment shall not be subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding of an advance directive's invalidity.

Acts 2001, No. 755, §1.

*§233. Individuals prohibited from serving as representative*

The following individuals shall be prohibited from serving as a representative:

- (1) The treating physician, provider, or an employee of the physician or provider if the physician, provider, or employee is unrelated to the principal by blood, marriage, or adoption.
- (2) An owner, operator, or employee of a health care facility in which the principal is a patient or resident if the owner, operator, or employee is unrelated to the principal by blood, marriage, or adoption.

Acts 2001, No. 755, §1.

*§234. Individuals prohibited from serving as witnesses to advance directive for mental health treatment*

The following individuals shall be prohibited from serving as a witness to the signing of an advance directive for mental health treatment:

- (1) The treating physician, provider, or a relative of the physician or provider.
- (2) An owner, operator, or relative of an owner or operator of a mental health treatment facility in which the principal is a patient or resident.
- (3) An individual related to the principal by blood, marriage, or adoption.

Acts 2001, No. 755, §1.

*§235. Withdrawal of representative; rescission of withdrawal*

A. A representative may withdraw by giving notice to the principal. If a principal is incapable, the representative may withdraw by giving notice to the treating physician or provider. The treating physician or provider shall document the withdrawal as part of the principal's medical record.

B. An individual who has withdrawn under the provisions of Subsection A of this Section may rescind the withdrawal by executing an acceptance after the date of the withdrawal. An individual who rescinds a withdrawal shall give notice to the principal if the principal is capable or to the principal's physician or provider if the principal is incapable.

Acts 2001, No. 755, §1.

*§236. Form*

The Department of Health and Hospitals, in consultation with the Mental Health Advocacy Service, shall develop a form to implement the provisions of this Part.

Acts 2001, No. 755, §1.

