

## CHAPTER 755 - ESTATES

### ACT 43. MENTAL HEALTH TREATMENT PREFERENCE DECLARATION ACT.

(755 ILCS 43/1) Sec. 1. Short title. This Act may be cited as the Mental Health Treatment Preference Declaration Act.

(755 ILCS 43/5) Sec. 5. Definitions. As used in this Act:

- (1) "Adult" shall have the same meaning as provided in Section 10 of the Health Care Surrogate Act.
- (2) "Attending physician" shall have the same meaning as provided in Section 10 of the Healthcare Surrogate Act.
- (3) "Attorney-in-fact" means an adult validly appointed under this Act to make mental health treatment decisions for a principal under a declaration for mental health treatment and also means an alternative attorney-in-fact.
- (4) "Declaration" means a document making a declaration of preferences or instructions regarding mental health treatment.
- (5) "Incapable" means that, in the opinion of 2 physicians or the court, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.
- (6) "Mental Health Facility" shall have the same meaning as provided in Section 1-114 of the Mental Health and Developmental Disabilities Code.
- (7) "Mental health treatment" means electroconvulsive treatment, treatment of mental illness with psychotropic medication, and admission to and retention in a mental health facility for a period not to exceed 17 days for care or treatment of mental illness.
- (8) "Physician" means a physician or psychiatrist as defined in Sections 1-120 and 1-121, respectively, of the Mental Health and Developmental Disabilities Code.
- (9) "Principal" means the person making a declaration for his or her personal mental health treatment.
- (10) "Provider" means any mental health facility or any other person which is devoted in whole or part to providing mental health services.

(755 ILCS 43/10) Sec. 10. Declaration of preference or instructions. (1) An adult of sound mind may make a declaration of preferences or instructions regarding mental health treatment. The preferences or instructions may include consent to or refusal of mental health treatment.

(2) A declaration for mental health treatment may be invoked within 3 years of its execution unless it is revoked. The authority of a named attorney-in-fact and any alternative attorney-in-fact named in the declaration continues in effect as long as the declaration appointing the attorney-in-fact is in effect or until the attorney-in-fact has withdrawn. If a declaration for mental health treatment has been invoked and is in effect at the expiration of 3 years after its execution, the declaration remains effective until the principal is no longer incapable.

(755 ILCS 43/15) Sec. 15. Designation of attorney-in-fact. A declaration may designate a competent adult to act as attorney-in-fact to make decisions about mental health treatment. 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 may make decisions about mental health treatment on behalf of the principal only when the principal is incapable. The decisions must be consistent with any desires the principal has expressed in the declaration.

(755 ILCS 43/20) Sec. 20. Signatures required. A declaration is effective only if it is signed by the principal, and 2 competent adult witnesses. The witnesses must attest that the principal is known to them, signed the declaration in their presence and appears to be of sound mind and not under duress, fraud or undue influence. Persons specified in Section 65 of this Act may not act as witnesses.

(755 ILCS 43/25) Sec. 25. Operation of declaration. A declaration becomes operative when it is delivered to the principal's attending physician and remains valid until revoked or expired. The attending physician shall act in accordance with an operative declaration when the principal has been found to be incapable. The attending physician shall 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.

(755 ILCS 43/30) Sec. 30. Authority of attorney-in-fact. (1) The attorney-in-fact does not have authority to make mental health treatment decisions unless the principal is incapable.

(2) The attorney-in-fact is not, as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal.

(3) Except to the extent the right is limited by the declaration or any federal law, an attorney-in-fact has the same right as the principal to receive information regarding the proposed mental health treatment and to receive, review and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.

(4) In exercising authority under the declaration, the attorney-in-fact has a duty to act consistently with the desires of the principal as expressed in the declaration. If the principal's desires are not expressed in the declaration and not otherwise known by the attorney-in-fact, the attorney-in-fact has a duty to act in what the attorney-in-fact in good faith believes to be the best interests of the principal.

(5) An attorney-in-fact is not subject to criminal prosecution, civil liability or professional disciplinary action for any action taken in good faith pursuant to a declaration for mental health treatment.

(755 ILCS 43/35) Sec. 35. Declaration has no effect on other services. 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 mental health facility.

(755 ILCS 43/40) Sec. 40. Declaration-Part of patient's medical record. Upon being presented with a declaration, a physician or other provider shall make the declaration a part of the principal's medical record. When acting under authority of a declaration, a physician or provider must comply with it to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested, and applicable law. If the physician or other provider is unwilling at any time to comply with the declaration, the physician or provider may withdraw from providing treatment consistent with the exercise of independent medical judgment and must promptly notify the principal and the attorney-in-fact and document the notification in the principal's medical record.

(755 ILCS 43/45) Sec. 45. Principal's wishes must be followed. (1) The physician or provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in a declaration for mental health treatment only:

(a) When a court order contradicts the principal's wishes as specified in the declaration;  
or

(b) In cases of emergency endangering life or health.

(2) A declaration does not limit any authority provided in Sections 3-100 through 3-910 of the Mental Health and Developmental Disabilities Code either to take a person into custody, or to admit, retain, or treat a person in a health care facility.

(755 ILCS 43/50) Sec. 50. Revocation. A declaration may be revoked in whole or in part by written statement at any time by the principal if the principal is not incapable. A written statement of revocation is effective when signed by the principal and a physician and the principal delivers the revocation to the attending physician. The attending physician shall note the revocation as part of the principal's medical record.

(755 ILCS 43/55) Sec. 55. Declaration protects physician or provider from legal action. A physician who, to a reasonable degree of medical certainty, determines that the principal

is capable or incapable of revoking a declaration or a physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the decision or direction of the attorney-in-fact or the validity of a declaration is not subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding of a declaration's invalidity.

(755 ILCS 43/60) Sec. 60. Restrictions on who may serve as attorney-in-fact. None of the following may serve as attorney-in-fact:

(1) The attending physician or mental health service 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.

(755 ILCS 43/65) Sec. 65. Restrictions on who may witness declaration. None of the following may serve as a witness to the signing of a declaration:

(1) The attending physician or mental health service provider or a relative of the physician or provider;

(2) An owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident; or

(3) A person related to the principal by blood, marriage, or adoption.

(755 ILCS 43/70) Sec. 70. Withdrawal of attorney-in-fact. (1) An attorney-in-fact may withdraw by giving notice to the principal. If a principal is incapable, the attorney-in-fact may withdraw by giving notice to the attending physician. The attending physician shall note the withdrawal as part of the principal's medical record.

(2) A person who has withdrawn under the provisions of subsection (1) of this Section may rescind the withdrawal by executing an acceptance after the date of the withdrawal. The acceptance must be in the same form as provided by Section 75 of this Act for accepting an appointment. A person who rescinds a withdrawal must give notice to the principal if the principal is capable or to the principal's attending physician if the principal is incapable.

(755 ILCS 43/75) Sec. 75. Form of declaration. A declaration for mental health treatment shall be in substantially 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 2 physicians or the court 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 electroconvulsive treatment, treatment of mental illness with psychotropic medication, and admission to and retention in a health care facility for a period up to 17 days.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include: .....  
.....

PSYCHOTROPIC MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

..... I consent to the administration of the following medications:  
.....

..... I do not consent to the administration of the following medications: -----  
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Conditions or limitations:.....  
.....

ELECTROCONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding electroconvulsive treatment are as follows:

..... I consent to the administration of electroconvulsive treatment.

..... I do not consent to the administration of electroconvulsive treatment.

Conditions or limitations:.....  
.....

ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding admission to and retention in a health care facility for mental health treatment are as follows:

..... I consent to being admitted to a health care facility for mental health treatment.

..... I do not consent to being admitted to a health care facility for mental health treatment.

This directive cannot, by law, provide consent to retain me in a facility for more than 17 days.

Conditions or limitations:.....  
.....

SELECTION OF PHYSICIAN (OPTIONAL)

If it becomes necessary to determine if I have become incapable of giving or withholding informed consent for mental health treatment, I choose Dr. .... of ..... to be one of the 2 physicians who will determine whether I am incapable. If that physician is unavailable, that physician's designee shall determine whether I am incapable.

ADDITIONAL REFERENCES OR INSTRUCTIONS

.....  
..... Conditions or limitations:.....  
.....

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 that are consistent with the wishes I have expressed in this declaration or, if not expressed, as are otherwise known to my attorney-in-fact. If my wishes are not expressed and are not otherwise known by my attorney-in-fact, my attorney-in-fact is to act in what he or she believes to be my best interest. .... (Signature of Principal/Date)

AFFIRMATION OF WITNESSES

We affirm that the principal is personally known to us, that the principal signed or acknowledged the principal's signature on this declaration for mental health treatment in our presence, that the principal appears to be of sound mind and not under duress, fraud or undue influence, that neither of us is: A person appointed as an attorney-in-fact by this document; The principal's attending physician or mental health service provider or a relative of the physician or provider; The owner, operator, or relative of an owner or operator of a facility in which the principal is a patient or resident; or A person related to the principal by blood, marriage or adoption. Witnessed By: .....  
..... (Signature of Witness/Date) (Printed Name of Witness)  
..... (Signature of Witness/Date) (Printed Name of Witness)

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 principal. I understand that I have a duty to act consistent with the desires of the principal as expressed in this appointment. I understand that this document gives me authority to make decisions about mental health treatment only while the principal is incapable as determined by a court or 2 physicians. I understand that the principal may revoke this declaration in whole or in part at any time and in any manner when the principal is not incapable. .... (Signature of Attorney-in-fact/Date) (Printed Name) ..... (Signature of Attorney-in-fact/Date)(Printed Name of Witness)

NOTICE TO PERSON MAKING A DECLARATION FOR MENTAL HEALTH TREATMENT

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about 3 types of mental health treatment: psychotropic medication, electroconvulsive therapy, and short-term (up to 17 days) admission to a treatment facility. The instructions that you include in this declaration will be followed only if 2 physicians or the court believes that you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments.

You may also appoint a person as your attorney-in-fact to make these treatment decisions for you if you become incapable. The person you appoint has a duty to act consistent with your desires as stated in this document or, if your desires are not stated or otherwise made

known to the attorney-in-fact, to act in a manner consistent with what the person in good faith believes to be in your best interest. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your attorney-in-fact at any time.

This document will continue in effect for a period of 3 years unless you become incapable of participating in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapable.

You have the right to revoke this document in whole or in part at any time you have been determined by a physician to be capable of giving or withholding informed consent for mental health treatment. A revocation is effective when it is communicated to your attending physician in writing and is signed by you and a physician. The revocation may be in a form similar to the following:

REVOCATION I, ....., willfully and voluntarily revoke my declaration for mental health treatment as indicated [ ] I revoke my entire declaration [ ] I revoke the following portion of my declaration

.....  
..... Date  
..... Signed ..... (Signature of principal)

I, Dr. ....., have evaluated the principal and determined that he or she is capable of giving or withholding informed consent for mental health treatment. Date .....  
..... (Signature of physician) If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration will not be valid unless it is signed by 2 qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

(755 ILCS 43/110) Sec. 110. The Department of Mental Health and Developmental Disabilities Act is amended by repealing Section 60.

(755 ILCS 43/115) Sec. 115. The Planning Council on Mental Health Law, Article 1 of "An Act in relation to mental health and developmental disabilities", approved August 29, 1990, Public Act 86-1190, is repealed.