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

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

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

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

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

A. "advance directive for mental health treatment"  
means an individual instruction or power of attorney for  
mental health treatment made pursuant to the Mental Health  
Care Treatment Decisions Act;

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

C. "capacity" means an individual's ability to  
understand and appreciate the nature and consequences of  
proposed mental health treatment, including significant

1 benefits and risks and alternatives to the proposed mental  
2 health treatment, and to make and communicate an informed  
3 mental health treatment decision. A written determination or  
4 certification of lack of capacity shall be made only  
5 according to the provisions of the Mental Health Care  
6 Treatment Decisions Act;

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

11 E. "guardian" means a judicially appointed  
12 guardian having authority to make a mental health decision  
13 for an individual;

14 F. "individual instruction" means an individual's  
15 direction concerning a mental health treatment decision for  
16 the individual, made while the individual has capacity, which  
17 is to be implemented when the individual has been determined  
18 to lack capacity;

19 G. "mental health treatment" means services  
20 provided for the prevention of, amelioration of symptoms of  
21 or recovery from mental illness or emotional disturbance,  
22 including electroconvulsive treatment, treatment with  
23 medication, counseling, rehabilitation services or evaluation  
24 for admission to a facility for care or treatment of persons  
25 with mental illness, if required;

1           H. "mental health treatment decision" means a  
2 decision made by an individual or the individual's agent or  
3 guardian regarding the individual's mental health treatment,  
4 including:

5                   (1) selection and discharge of health care  
6 or mental health treatment providers and institutions;

7                   (2) approval or disapproval of diagnostic  
8 tests, programs of medication and mental health treatment;  
9 and

10                   (3) directions relating to mental health  
11 treatment.

12           I. "mental health treatment facility" means an  
13 institution, facility or agency licensed, certified or  
14 otherwise authorized or permitted by law to provide mental  
15 health treatment in the ordinary course of business;

16           J. "mental health treatment provider" or "health  
17 care provider" means an individual licensed, certified or  
18 otherwise authorized or permitted by law to provide diagnosis  
19 or mental health treatment in the ordinary course of business  
20 or practice of a profession;

21           K. "mental illness" means a substantial disorder  
22 of a person's emotional process, thoughts or cognition that  
23 grossly impairs judgment, behavior or capacity to recognize  
24 reality, but "mental illness" does not mean a developmental  
25 disability;

1           L. "power of attorney for mental health treatment"  
2 means the designation of an agent to make mental health  
3 treatment decisions for the individual granting the power,  
4 made while the individual has capacity;

5           M. "primary health care professional" means a  
6 qualified health care professional designated by an  
7 individual or the individual's agent or guardian to have  
8 primary responsibility for the individual's health care or,  
9 in the absence of a designation or if the designated  
10 qualified health care professional is not reasonably  
11 available, a qualified health care professional who  
12 undertakes that responsibility;

13           N. "principal" means an adult or emancipated minor  
14 who, while having capacity, has made a power of attorney for  
15 mental health treatment by which the adult or emancipated  
16 minor delegates the right to make mental health treatment  
17 decisions for that adult or emancipated minor to an agent;

18           O. "qualified health care professional" means a  
19 licensed health care provider who is a physician, physician  
20 assistant, nurse practitioner, nurse or psychologist;

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

25           Q. "supervising health care provider" means the

1 primary qualified health care professional or, if the primary  
2 qualified health care professional is not reasonably  
3 available, the health care provider who has undertaken  
4 primary responsibility for an individual's health care; and

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

7 Section 4. ADVANCE DIRECTIVE FOR MENTAL HEALTH  
8 TREATMENT.--

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

17 B. An adult or emancipated minor, while having  
18 capacity, may execute a power of attorney for mental health  
19 treatment that may authorize the agent to make any mental  
20 health treatment decision the principal could have made while  
21 having capacity. The power of attorney for mental health  
22 treatment shall be in writing signed by the principal and  
23 witnessed pursuant to Subsections I and J of this section.  
24 The power of attorney for mental health treatment shall  
25 remain in effect notwithstanding the principal's later

1 incapacity under the Mental Health Care Treatment Decisions  
2 Act or Article 5 of the Uniform Probate Code. The power of  
3 attorney for mental health treatment may include individual  
4 instructions. Unless related to the principal by blood,  
5 marriage or adoption, an agent may not be an attending  
6 qualified health care professional or an employee of the  
7 qualified health care professional or an owner, operator or  
8 employee of a mental health treatment facility at which the  
9 principal is receiving care.

10 C. Unless otherwise specified in a power of  
11 attorney for mental health treatment, the authority of an  
12 agent becomes effective only upon certification that the  
13 principal lacks capacity and ceases to be effective upon a  
14 determination that the principal has recovered capacity.

15 D. Unless otherwise specified in a written advance  
16 directive for mental health treatment, written certification  
17 that an individual lacks or has recovered capacity or that  
18 another condition exists that affects an individual  
19 instruction or the authority of an agent shall be made  
20 according to the provisions of the Mental Health Care  
21 Treatment Decisions Act.

22 E. An agent shall make a mental health treatment  
23 decision in accordance with the principal's individual  
24 instructions, if any, and other wishes to the extent known to  
25 the agent. Otherwise, the agent shall make the decision in

1 accordance with the agent's determination of the principal's  
2 best interest. In determining the principal's best interest,  
3 the agent shall consider the principal's personal values to  
4 the extent known to the agent.

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

7 G. A written advance directive for mental health  
8 treatment may include the individual's nomination of a choice  
9 of guardian of the individual.

10 H. The fact that an individual has executed an  
11 advance directive for mental health treatment shall not  
12 constitute an indication of mental illness.

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

- 17 (1) is known to the witness;  
18 (2) signed the advance directive for mental  
19 health treatment in the witness' presence;  
20 (3) appears to have capacity; and  
21 (4) is not acting under duress, fraud or  
22 undue influence.

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

- 25 (1) an agent of the principal;

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

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

5 (4) the attending qualified health care  
6 professional; or

7 (5) an owner, operator or employee of a  
8 mental health treatment facility at which the principal is  
9 receiving care or of any parent organization of the mental  
10 health treatment facility.

11 Section 5. CAPACITY.--

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

16 B. An individual is presumed to have capacity to  
17 make a mental health treatment decision, to give an advance  
18 directive for mental health treatment or to revoke an advance  
19 directive for mental health treatment.

20 C. An individual shall not be determined to lack  
21 capacity solely on the basis that the individual chooses not  
22 to accept the treatment recommended by a health care  
23 provider.

24 D. An individual, at any time, may challenge a  
25 determination that the individual lacks capacity by a signed

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

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

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

23 G. The following certification of the examination  
24 of a principal determining whether the principal is in need  
25 of mental health treatment and whether the principal does or

1 does not lack capacity may be used by examiners:

2 "OPTIONAL EXAMINER'S CERTIFICATION

3 We, the undersigned, have made an examination of \_\_\_\_\_,  
4 and do hereby certify that we have made a careful personal  
5 examination of the actual condition of the person and on such  
6 examination we find that \_\_\_\_\_:

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

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

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

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

21 Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

22 \_\_\_\_\_ M.D., D.O., Ph.D., Other

23 \_\_\_\_\_ M.D., D.O., Ph.D., Other

24 Subscribed and sworn to before me this \_\_\_\_\_ day of

25 \_\_\_\_\_, 20\_\_.

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\_\_\_\_\_

Notary Public

REPORT OF SYMPTOMS AND HISTORY OF CASE BY EXAMINERS

1. GENERAL

Complete name\_\_\_\_\_

Place of residence\_\_\_\_\_

Sex\_\_\_\_\_ Ethnicity\_\_\_\_\_

Age\_\_\_\_\_

Date of Birth\_\_\_\_\_

2. STATEMENT OF FACTS AND CIRCUMSTANCES

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
\_\_\_\_\_

2. the principal's ability to understand and communicate the consequences of the proposed health care or mental health

1 treatment described as:

2 \_\_\_\_\_  
3 \_\_\_\_\_

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

7 \_\_\_\_\_  
8 \_\_\_\_\_

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

12 \_\_\_\_\_  
13 \_\_\_\_\_

14 3. NAME AND RELATIONSHIPS OF FAMILY MEMBERS/OTHERS TO BE  
15 NOTIFIED

16 Other data \_\_\_\_\_

17 Dated at \_\_\_\_\_, New Mexico, this \_\_\_\_\_ day  
18 of \_\_\_\_\_, 20\_\_\_\_.

19 \_\_\_\_\_ M.D., D.O., Ph.D.,  
20 \_\_\_\_\_ Other Address  
21 \_\_\_\_\_ M.D., D.O., Ph.D.,  
22 \_\_\_\_\_ Other Address."

23 Section 6. REVOCATION OF ADVANCE DIRECTIVE FOR MENTAL  
24 HEALTH TREATMENT.--

25 A. An individual, while having capacity, may

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

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

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

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

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

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

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

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

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

24 B. A principal may designate a capable person  
25 eighteen years of age or older to act as an agent to make

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

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

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

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

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

8 "ADVANCE DIRECTIVE FOR MENTAL HEALTH TREATMENT

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

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

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

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

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

11 I thus do hereby declare:

12 I. DECLARATION FOR MENTAL HEALTH TREATMENT

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

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

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

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

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

10 Dr. \_\_\_\_\_ Contact information \_\_\_\_\_

11 Dr. \_\_\_\_\_ Contact information \_\_\_\_\_

12 I do not wish to be treated by Dr.

13 \_\_\_\_\_

14 Other Preferences:

15 \_\_\_\_\_

16 Preferences and Instructions About Other Providers

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

21 Name: \_\_\_\_\_ Profession: \_\_\_\_\_

22 Contact Information \_\_\_\_\_

23 Name: \_\_\_\_\_ Profession: \_\_\_\_\_

24 Contact Information \_\_\_\_\_

25 Preferences and Instructions About Medications for Mental

1 Health Treatment (*initial and complete all that apply*)

2 \_\_\_ I consent, and authorize my agent to consent, to the  
3 following medications: \_\_\_\_\_

4 \_\_\_ I do not consent, and I do not authorize my agent to  
5 consent, to the administration of the following medications:

6 \_\_\_\_\_

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

12 \_\_\_ I am willing to try any other medications the hospital  
13 doctor recommends.

14 \_\_\_ I am willing to try any other medications my outpatient  
15 doctor recommends.

16 \_\_\_ I do not want to try any other medications.

17 Medication Allergies

18 I have allergies to, or severe side effects from, the  
19 following:

20 \_\_\_\_\_

21 I have the following other preferences or instructions about  
22 medications:

23 \_\_\_\_\_

24 Preferences and Instructions About Hospitalization and  
25 Alternatives

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

3 \_\_\_\_\_ In the event my psychiatric condition is serious enough  
4 to require 24-hour care and I have no physical conditions  
5 that require immediate access to emergency medical care, I  
6 prefer to receive this care in programs/facilities designed  
7 as alternatives to psychiatric hospitalization.

8 \_\_\_\_\_ I would also like the interventions below to be tried  
9 before hospitalization is considered:

10 \_\_\_\_\_ Calling someone or having someone call me when needed.

11 Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

12 \_\_\_\_\_ Having a mental health service provider come to see me

13 \_\_\_\_\_ Going to a crisis triage center or emergency room

14 \_\_\_\_\_ Staying overnight at a crisis respite (temporary) bed

15 \_\_\_\_\_ Seeing a provider for help with psychiatric medications

16 \_\_\_\_\_ Other, specify: \_\_\_\_\_

17 Authority to Consent to Inpatient Treatment

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

20 (Sign one)

21 \_\_\_\_\_ If deemed appropriate by my agent and treating physician

22 \_\_\_\_\_ Signature

23 or

24 \_\_\_\_\_ Under the following circumstances (specify symptoms,  
25 behaviors or circumstances that indicate the need for

1 hospitalization) \_\_\_\_\_

2 \_\_\_\_\_ Signature

3 \_\_\_ I do not consent, or authorize my agent to consent, to  
4 evaluation for admission to inpatient treatment

5 \_\_\_\_\_ Signature

6 Preferences and Instructions About Use of Seclusion or  
7 Restraint

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

11 \_\_\_ "Talk me down": one-on-one

12 \_\_\_ More medication

13 \_\_\_ Time out/privacy

14 \_\_\_ Show of authority/force

15 \_\_\_ Shift my attention to something else

16 \_\_\_ Set firm limits on my behavior

17 \_\_\_ Help me to discuss/vent feelings

18 \_\_\_ Decrease stimulation

19 \_\_\_ Offer to have neutral person settle dispute

20 \_\_\_ Other, specify \_\_\_\_\_

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

1     \_\_\_ Seclusion

2     \_\_\_ Seclusion and physical restraint (combined)

3     \_\_\_ Medication by injection

4     \_\_\_ Medication in pill or liquid form

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

14    Preferences and Instructions About Electroconvulsive Therapy

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

16    \_\_\_ I do not consent, nor authorize my agent to consent, to  
17    the administration of electroconvulsive therapy.

18    \_\_\_\_\_ Signature

19    \_\_\_ I consent, and authorize my agent to consent, to the  
20    administration of electroconvulsive therapy.

21    \_\_\_\_\_ Signature

22    \_\_\_ I consent, and authorize my agent to consent, to the  
23    administration of electroconvulsive therapy, but only under  
24    the following conditions:

25    \_\_\_\_\_

1 \_\_\_\_\_ Signature

2 Preferences and Instructions About Who Is Permitted to Visit

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

6 Name:

7 \_\_\_\_\_

8 Name:

9 \_\_\_\_\_

10 Name:

11 \_\_\_\_\_

12 I understand that persons not listed above may be permitted  
13 to visit me.

14 Additional Instructions About My Mental Health Care

15 Other instructions about my mental health care:

16 \_\_\_\_\_

17 In case of emergency, please contact:

18 \_\_\_\_\_

19 Name: \_\_\_\_\_ Address:

20 \_\_\_\_\_

21 Work Telephone: \_\_\_\_\_ Home telephone:

22 \_\_\_\_\_

23 Physician: \_\_\_\_\_ Address:

24 \_\_\_\_\_

25 Telephone: \_\_\_\_\_

1 The following may help me to avoid a hospitalization: \_\_\_\_\_

2 \_\_\_\_\_

3 I generally react to being hospitalized as follows:

4 \_\_\_\_\_

5 Staff of the hospital or crisis unit can help me by doing the  
6 following:

7 \_\_\_\_\_

8 Refusal of Treatment

9 I do not consent to any mental health treatment.

10 \_\_\_\_\_

11 Signature

12 I further state that this document and the information  
13 contained in it may be released to any requesting licensed  
14 mental health professional.

15 \_\_\_\_\_

16 Signature of principal                      Date

17 \_\_\_\_\_

18 Signature of witness                      Date

19 II. APPOINTMENT OF AGENT

20 If my primary health care professional and a mental health  
21 provider determine that my ability to receive and evaluate  
22 information effectively or communicate decisions is impaired  
23 to such an extent that I lack the capacity to refuse or  
24 consent to mental health treatment and that mental health  
25 treatment is necessary, I direct my primary health care

1 professional and other health care providers, pursuant to the  
2 Mental Health Care Treatment Decisions Act, to follow the  
3 instructions of my agent.

4 I hereby appoint:

5 Name \_\_\_\_\_

6 Address \_\_\_\_\_

7 Telephone \_\_\_\_\_ to act as my  
8 agent to make decisions regarding my mental health treatment  
9 if I become incapable of giving or withholding informed  
10 consent for that treatment.

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

14 Name \_\_\_\_\_

15 Address \_\_\_\_\_

16 Telephone \_\_\_\_\_

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

21 \_\_\_\_\_

22 Signature of principal      Date

23 III. CONFLICTING PROVISION

24 I understand that if I have completed both a declaration and  
25 have appointed an agent and if there is a conflict between my

1 agent's decision and my declaration, my declaration shall  
2 take precedence unless I indicate otherwise.

3 \_\_\_\_\_ Signature

4 I understand that if I have completed both an advance health  
5 care directive and an advance directive for mental health  
6 treatment, that those directives should be executed as  
7 separate instructions.

8 \_\_\_\_\_ Signature

9 IV. OTHER PROVISIONS

10 1. In the absence of my ability to give directions regarding  
11 my mental health treatment, it is my intention that this  
12 advance directive for mental health treatment shall be  
13 honored as the expression of my legal right to consent or to  
14 refuse to consent to mental health treatment.

15 2. I direct the following concerning the care of my minor  
16 children:

17 \_\_\_\_\_

18 3. This advance directive for mental health treatment shall  
19 be in effect until it is revoked.

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

22 5. I understand and agree that if I have any prior advance  
23 directives for mental health treatment, and if I sign this  
24 advance directive for mental health treatment, my prior  
25 advance directives for mental health treatment are revoked.

1 6. I understand the full importance of this advance  
2 directive for mental health treatment and I am emotionally  
3 and mentally competent to make this advance directive for  
4 mental health treatment.

5 Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

6 \_\_\_\_\_

7 Signature

8 \_\_\_\_\_

9 City, county and state of residence

10 This advance directive was signed in my presence.

11 \_\_\_\_\_

12 Signature of witness

13 \_\_\_\_\_

14 Address

15 \_\_\_\_\_".

16 Section 8. DECISIONS BY GUARDIAN.--

17 A. A guardian shall comply with the ward's  
18 individual instructions and may not revoke the ward's advance  
19 directive for mental health treatment unless the appointing  
20 court expressly so authorizes after notice to the agent and  
21 the ward.

22 B. A mental health treatment decision of an agent  
23 appointed by an individual having capacity takes precedence  
24 over that of a guardian, unless the appointing court  
25 expressly directs otherwise after notice to the agent and the

1 ward.

2 C. Subject to the provisions of Subsections A and  
3 B of this section, a mental health treatment decision made by  
4 a guardian for the ward is effective without judicial  
5 approval, if the appointing court has expressly authorized  
6 the guardian to make mental health treatment decisions for  
7 the ward, in accordance with the provisions of Sections  
8 43-1-15 or 45-5-312 NMSA 1978, after notice to the ward and  
9 any agent.

10 Section 9. OBLIGATIONS OF MENTAL HEALTH TREATMENT  
11 PROVIDER.--

12 A. Before implementing a mental health treatment  
13 decision made for a patient, a supervising health care  
14 provider shall promptly communicate to the patient the  
15 decision made and the identity of the person making the  
16 decision.

17 B. A supervising health care provider who knows of  
18 the existence of an advance directive for mental health  
19 treatment, a revocation of an advance directive for mental  
20 health treatment or a challenge to a determination or  
21 certification of lack of capacity shall promptly record its  
22 existence in the patient's health care record and, if it is  
23 in writing, shall request a copy and, if one is furnished,  
24 shall arrange for its maintenance in the health care record.

25 C. A qualified health care professional shall

1 disclose an advance directive for mental health treatment to  
2 other qualified health care professionals only when it is  
3 determined that disclosure is necessary to give effect to or  
4 provide treatment in accordance with an individual  
5 instruction.

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

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

20 (1) before and after the patient is  
21 determined to lack capacity, with an individual instruction  
22 of the patient made while the patient had capacity;

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

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

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

10                   (1) the treatment requested is infeasible or  
11 unavailable;

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

14                   (3) the treatment requested conflicts with  
15 other applicable law.

16                   G. A mental health treatment provider or mental  
17 health treatment facility may decline to comply with an  
18 individual instruction or mental health treatment decision  
19 that requires medically ineffective health care or health  
20 care contrary to generally accepted health care standards  
21 applicable to the mental health treatment provider or mental  
22 health treatment facility. "Medically ineffective health  
23 care" means treatment that would not offer the patient any  
24 significant benefit, as determined by a physician chosen by  
25 the principal or agent.

1           H. A health care provider or mental health  
2 treatment facility that declines to comply with an individual  
3 instruction or mental health care decision shall:

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

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

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

16           I. A health care provider or mental health  
17 treatment facility shall not require or prohibit the  
18 execution or revocation of an advance directive for mental  
19 health treatment as a condition for providing health care.

20           J. The Mental Health Care Treatment Decisions Act  
21 does not require or permit a mental health treatment facility  
22 or health care provider to provide any type of mental health  
23 treatment for which the mental health treatment facility or  
24 health care provider is not licensed, certified or otherwise  
25 authorized or permitted by law to provide.

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

7           Section 11. IMMUNITIES.--

8           A. A health care provider or mental health  
9 treatment facility acting reasonably and in good faith and in  
10 accordance with generally accepted health care standards  
11 applicable to the health care provider or mental health  
12 treatment facility is not subject to civil or criminal  
13 liability or to discipline for unprofessional conduct for:

14                   (1) complying or attempting to comply with a  
15 mental health treatment decision of a person apparently  
16 having authority to make a mental health treatment decision  
17 for a patient;

18                   (2) declining to comply with a mental health  
19 treatment decision of a person based on a belief that the  
20 person then lacked authority;

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

25                   (4) declining to comply with a mental health

1 treatment directive as permitted; or

2 (5) complying or attempting to comply with  
3 any other provision of the Mental Health Care Treatment  
4 Decisions Act.

5 B. An individual acting as agent or guardian under  
6 the Mental Health Care Treatment Decisions Act is not subject  
7 to civil or criminal liability or to discipline for  
8 unprofessional conduct for mental health treatment decisions  
9 made in good faith.

10 Section 12. PROHIBITED PRACTICE.--

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

17 B. No insurer may condition the sale, procurement  
18 or issuance of a policy, plan, contract, certificate or other  
19 evidence of coverage, or entry into a pension, profit-  
20 sharing, retirement, employment or similar benefit plan, upon  
21 the execution or revocation of an advance directive for  
22 mental health treatment; nor shall the existence of an  
23 advance directive for mental health treatment modify the  
24 terms of an existing policy, plan, contract, certificate or  
25 other evidence of coverage of insurance.

1 C. The provisions of this section shall be  
2 enforced by the superintendent of insurance under the New  
3 Mexico Insurance Code.

4 Section 13. STATUTORY DAMAGES.--

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

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

22 C. The damages provided in this section are in  
23 addition to other types of relief available under other law,  
24 including civil and criminal law and law providing for  
25 disciplinary procedures.

1           Section 14. EFFECT OF COPY.--A copy of a written  
2 advance directive for mental health treatment or revocation  
3 of an advance directive for mental health treatment has the  
4 same effect as the original.

5           Section 15. EFFECT OF THE MENTAL HEALTH CARE TREATMENT  
6 DECISIONS ACT.--

7           A. The Mental Health Care Treatment Decisions Act  
8 does not create a presumption concerning the intention of an  
9 individual who has not made or who has revoked an advance  
10 directive for mental health treatment.

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

14                   (1) constitute a suicide, a homicide or  
15 other crime; or

16                   (2) legally impair or invalidate a governing  
17 instrument, notwithstanding any term of the governing  
18 instrument to the contrary. "Governing instrument" means a  
19 deed, will, trust, insurance or annuity policy, account with  
20 POD (payment on death designation), security registered in  
21 beneficiary form (TOD), pension, profit-sharing, retirement,  
22 employment or similar benefit plan, instrument creating or  
23 exercising a power of appointment or a dispositive,  
24 appointive or nominative instrument of any similar type.

25           C. The Mental Health Care Treatment Decisions Act

1 does not authorize mercy killing, assisted suicide,  
2 euthanasia or the provision, withholding or withdrawal of  
3 health care, to the extent prohibited by other statutes of  
4 this state.

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

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

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

24 Section 16. TRANSITIONAL PROVISIONS.--

25 A. An advance directive for mental health

1 treatment is valid for purposes of the Mental Health Care  
2 Treatment Decisions Act if it complies with the provisions of  
3 that act, regardless of when or where executed or  
4 communicated.

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

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

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