

SENATE BILL NO. 50—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE DIVISION OF PUBLIC AND
BEHAVIORAL HEALTH OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Health and Human Services

SUMMARY—Provides for advance directives governing the provision of psychiatric care. (BDR 40-174)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to health care; establishing a procedure for a person to execute an advance directive for psychiatric care to direct a physician or other provider of health care in the event that the person is incapable of making or communicating decisions regarding psychiatric care; requiring a physician or provider of health care to comply with such an advance directive under certain circumstances; providing immunity from civil or criminal liability, or discipline for unprofessional conduct, to a physician or provider of health care who complies with such an advance directive; authorizing a person to register an advance directive for psychiatric care with the Secretary of State for deposit in the Registry of Advance Directives for Health Care; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, a person may provide an advance directive concerning his
2 or her health care in the form of a durable power of attorney for health care
3 decisions, a declaration governing the withholding or withdrawal of life-sustaining
4 treatment, a Physician Order for Life-Sustaining Treatment form or a do-not-
5 resuscitate order. (NRS 162A.700-162A.865, 449.535-449.690, 449.694, 449.800-
6 449.860, 450B.420) Existing law also provides for a Registry of Advance



7 Directives for Health Care, in which certain health records of a patient may be
8 deposited to facilitate treatment of that patient by any health care provider. (NRS
9 449.900-449.965)

10 **Section 8** of this bill authorizes a person of sound mind and 18 or more years of
11 age to execute an advance directive for psychiatric care to direct any provider of
12 health care on how he or she wishes psychiatric care to be provided in the event
13 that he or she is incapable of making decisions concerning such care or
14 communicating such decisions. **Section 8** also authorizes a person to designate
15 another person to make decisions for him or her in the event that he or she is
16 incapable of making such decisions. **Section 9** of this bill sets forth a sample form
17 that may be used by a person wishing to execute an advance directive for
18 psychiatric care. **Sections 10 and 11** of this bill establish: (1) the circumstances
19 under which an advance directive for psychiatric care becomes operative; and (2)
20 that a physician or other provider of health care may assume that such an advance
21 directive was validly executed. **Section 13** of this bill provides that a person may
22 revoke his or her advance directive for psychiatric care at any time, as long as he or
23 she is capable of making such a decision at the time. **Sections 12 and 13** of this bill
24 require a physician or other provider of health care to enter an advance directive for
25 psychiatric care or a revocation of such an advance directive into the medical
26 record of the person executing the advance directive or revocation. **Section 17** of
27 this bill provides that an advance directive for psychiatric care validly executed
28 pursuant to the laws of another state is valid in this State.

29 **Section 14** of this bill sets forth the following circumstances under which a
30 physician or other provider of health care may not comply with an advance
31 directive for psychiatric care: (1) compliance with the advance directive is not
32 consistent with generally accepted standards of care; (2) compliance is not
33 consistent with the availability of treatments requested in the advance directive; (3)
34 compliance would violate applicable laws; (4) the person executing the advance
35 directive is involuntarily admitted to a mental health facility and a course of
36 treatment is required by law; or (5) compliance would endanger the life of the
37 person executing the advance directive or any other person. **Section 15** of this bill
38 requires a physician or other provider of health care to promptly transfer the care of
39 a person executing an advance directive if the provider is unwilling to comply with
40 his or her advance directive.

41 **Section 16** of this bill shields a physician or other provider of health care from
42 civil or criminal liability, or discipline for unprofessional conduct, if: (1) the
43 physician or other provider of health care complies with an advance directive for
44 psychiatric care without knowledge that the advance directive was previously
45 revoked; (2) the actions of the physician or other provider of health care are
46 consistent with reasonable medical standards; or (3) a decision of a physician or
47 other provider of health care is made in good faith.

48 **Section 18** of this bill adds an advance directive for psychiatric care to the
49 definition of "advance directive" for purposes of registering such an advance
50 directive with the Secretary of State for deposit in the Registry of Advance
51 Directives for Health Care.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 449 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 17, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 17, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 7, inclusive, of this act have the meanings ascribed*
7 *to them in those sections.*

8 **Sec. 3.** *“Advance directive for psychiatric care” or “advance*
9 *directive” means a writing executed in accordance with the*
10 *requirements of section 8 of this act pursuant to which the*
11 *principal makes a declaration of instructions, information and*
12 *preferences regarding his or her psychiatric care.*

13 **Sec. 4.** *“Attending physician” has the meaning ascribed to it*
14 *in NRS 449.550.*

15 **Sec. 5.** *“Principal” means the person who has executed an*
16 *advance directive for psychiatric care.*

17 **Sec. 6.** *“Provider of health care” has the meaning ascribed*
18 *to it in NRS 449.581.*

19 **Sec. 7.** *“Psychiatric care” means the provision of psychiatric*
20 *services and psychiatric treatment and the administration of*
21 *psychotropic medication.*

22 **Sec. 8.** *A person of sound mind and 18 or more years of age*
23 *may execute at any time an advance directive for psychiatric care.*
24 *The principal may designate another natural person of sound*
25 *mind and 18 or more years of age to make decisions governing the*
26 *provision of psychiatric care. The advance directive must be*
27 *signed by the principal, or another at the principal’s direction, and*
28 *attested by two witnesses.*

29 **Sec. 9.** *The form of an advance directive for psychiatric care*
30 *may be substantially in the following form, and must be witnessed*
31 *or executed in the same manner as the following form:*

32
33 **NOTICE TO PERSON MAKING AN**
34 **ADVANCE DIRECTIVE FOR**
35 **PSYCHIATRIC CARE**

36
37 **THIS IS AN IMPORTANT LEGAL DOCUMENT. IT**
38 **CREATES AN ADVANCE DIRECTIVE FOR**
39 **PSYCHIATRIC CARE. BEFORE SIGNING THIS**
40 **DOCUMENT YOU SHOULD KNOW THESE**
41 **IMPORTANT FACTS:**



1 ***THIS DOCUMENT ALLOWS YOU TO MAKE***
2 ***DECISIONS IN ADVANCE ABOUT CERTAIN TYPES***
3 ***OF PSYCHIATRIC CARE. THE INSTRUCTIONS YOU***
4 ***INCLUDE IN THIS ADVANCE DIRECTIVE WILL BE***
5 ***FOLLOWED IF A PHYSICIAN OR LICENSED***
6 ***PSYCHOLOGIST DETERMINES THAT YOU ARE***
7 ***INCAPABLE OF MAKING OR COMMUNICATING***
8 ***TREATMENT DECISIONS. OTHERWISE YOU WILL BE***
9 ***CONSIDERED CAPABLE TO GIVE OR WITHHOLD***
10 ***CONSENT FOR THE TREATMENTS. YOUR***
11 ***INSTRUCTIONS MAY BE OVERRIDDEN IF YOU ARE***
12 ***BEING HELD IN ACCORDANCE WITH CIVIL***
13 ***COMMITMENT LAW. BY EXECUTING A DURABLE***
14 ***POWER OF ATTORNEY FOR HEALTH CARE AS SET***
15 ***FORTH IN NRS 162A.700 TO 162A.865, INCLUSIVE,***
16 ***YOU MAY ALSO APPOINT A PERSON AS YOUR***
17 ***AGENT TO MAKE TREATMENT DECISIONS FOR YOU***
18 ***IF YOU BECOME INCAPABLE. YOU HAVE THE***
19 ***RIGHT TO REVOKE THIS DOCUMENT AT ANY TIME***
20 ***YOU HAVE NOT BEEN DETERMINED TO BE***
21 ***INCAPABLE. YOU MAY NOT REVOKE THIS ADVANCE***
22 ***DIRECTIVE WHEN YOU ARE FOUND INCAPABLE BY***
23 ***A PHYSICIAN OR LICENSED PSYCHOLOGIST. A***
24 ***REVOCATION IS EFFECTIVE WHEN IT IS***
25 ***COMMUNICATED TO YOUR ATTENDING PHYSICIAN***
26 ***OR OTHER HEALTH CARE PROVIDER. THE***
27 ***PHYSICIAN OR OTHER PROVIDER SHALL NOTE THE***
28 ***REVOCATION IN YOUR MEDICAL RECORD. TO BE***
29 ***VALID, THIS ADVANCE DIRECTIVE MUST BE***
30 ***SIGNED BY TWO QUALIFIED WITNESSES,***
31 ***PERSONALLY KNOWN TO YOU, WHO ARE PRESENT***
32 ***WHEN YOU SIGN OR ACKNOWLEDGE YOUR***
33 ***SIGNATURE. IT MUST ALSO BE ACKNOWLEDGED***
34 ***BEFORE A NOTARY PUBLIC.***

35
36 ***NOTICE TO PHYSICIAN OR OTHER***
37 ***PROVIDER OF HEALTH CARE***
38

39 ***Under Nevada law, a person may use this advance***
40 ***directive to provide consent or refuse to consent to future***
41 ***psychiatric care if the person later becomes incapable of***
42 ***making or communicating those decisions. By executing a***
43 ***durable power of attorney for health care as set forth in***
44 ***NRS 162A.700 to 162A.865, inclusive, the person may also***
45 ***appoint an agent to make decisions regarding psychiatric***



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care for the person when incapable. A person is “incapable” when in the opinion of a physician or licensed psychologist the person currently lacks sufficient understanding or capacity to make or communicate decisions regarding psychiatric care. This document becomes effective upon its proper execution and remains valid unless revoked. Upon being presented with this advance directive, the physician or other provider of health care must make it a part of the person’s medical record. The physician or other provider must act in accordance with the statements expressed in the advance directive when the person is determined to be incapable, except as otherwise provided in section 14 of this act. The physician or other provider shall promptly notify the principal and, if applicable, the agent of the principal, and document in the principal’s medical record any act or omission that is not in compliance with any part of an advance directive. A physician or other provider may rely upon the authority of a signed, witnessed, dated and notarized advance directive, as set forth in section 11 of this act.

**ADVANCE DIRECTIVE FOR
PSYCHIATRIC CARE**

I,, being an adult of sound mind, willfully and voluntarily make this advance directive for psychiatric care to be followed if it is determined by my attending physician or a licensed psychologist 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 psychiatric care. I understand that psychiatric care may not be administered without my express and informed consent or, if I am incapable of giving my informed consent, the express and informed consent of my legally responsible person, my agent named pursuant to a valid durable power of attorney for health care or my consent expressed in this advance directive for psychiatric care. I understand that I may become incapable of giving or withholding informed consent or refusal for psychiatric care due to the symptoms of a diagnosed mental disorder. These symptoms may include:

.....



PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for psychiatric care, my instructions regarding psychoactive medications are as follows: (Place initials beside choice.)

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

I do not consent to the administration of the following medications: [.....]

Conditions or limitations:

ADMISSION TO AND RETENTION IN FACILITY

If I become incapable of giving or withholding informed consent for psychiatric care, my instructions regarding admission to and retention in a medical facility for psychiatric care are as follows: (Place initials beside choice.)

I consent to being admitted to a medical facility for psychiatric care. [.....]

My facility preference is:

I do not consent to being admitted to a medical facility for psychiatric care. [.....]

This advance directive cannot, by law, provide consent to retain me in a facility for more than 10 days.

Conditions or limitations:

ADDITIONAL INSTRUCTIONS

These instructions shall apply during the entire length of my incapacity.

In case of a mental health crisis, please contact:

1.

Name:

Address:

Home Telephone Number:

Work Telephone Number:

Relationship to Me:



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- 2. *Name:*
- Address:*
- Home Telephone Number:*
- Work Telephone Number:*
- Relationship to Me:*
- 3. *My physician:*
 - Name:*
 - Work Telephone Number:*
- 4. *My therapist or counselor:*
 - Name:*
 - Work Telephone Number:*

The following may cause me to experience a mental health crisis:

.....

The following may help me avoid a hospitalization:

.....

I generally react to being hospitalized as follows:

.....

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

.....

I give permission for the following person or people to visit me:

.....

Instructions concerning any other medical interventions, such as electroconvulsive (ECT) treatment (commonly referred to as "shock treatment"):

.....

Other instructions:

.....

I have attached an additional sheet of instructions to be followed and considered part of this advance directive. [.....]

**SHARING OF INFORMATION
BY PROVIDERS**

I understand that the information in this document may be shared by my provider of mental health care with any other provider who may serve me when necessary to provide treatment in accordance with this advance directive.

Other instructions about sharing of information:

.....



1 *instrument is an advance directive for psychiatric care and*
2 *that he or she willingly and voluntarily made and executed*
3 *it as his or her free act and deed for the purposes expressed*
4 *in it.*

5 *I further certify that and*
6 *....., witnesses, appeared before me and swore*
7 *or affirmed that each witnessed sign the*
8 *attached advance directive for psychiatric care believing*
9 *him or her to be of sound mind and also swore that at the*
10 *time each witnessed the signing, each person was: (1) not*
11 *the attending physician or provider of health care, or an*
12 *employee of the physician or provider, of the principal; (2)*
13 *not the owner or operator, or employee of the owner or*
14 *operator, of a medical facility in which the principal is a*
15 *patient or resident; and (3) not related within the third*
16 *degree of consanguinity to the principal or the spouse or*
17 *domestic partner of the principal. I further certify that I am*
18 *satisfied as to the genuineness and due execution of the*
19 *instrument.*

20 *This is the day of,*
21 *.....*

22 *Notary Public*

23 *My Commission expires:*

24 **Sec. 10.** *An advance directive for psychiatric care becomes*
25 *operative when it is communicated to a physician or any other*
26 *provider of health care and the principal is determined by the*
27 *attending physician or a licensed psychologist to be no longer able*
28 *to make or communicate decisions regarding the provision of*
29 *psychiatric care. When the advance directive becomes operative, a*
30 *physician and any other provider of health care shall act in*
31 *accordance with the provisions of the advance directive and with*
32 *the instructions of a person designated pursuant to section 8 of*
33 *this act, or comply with the requirements of section 15 of this act*
34 *to transfer the care of the principal.*

35 **Sec. 11.** *1. Unless he or she has knowledge to the contrary,*
36 *a physician or other provider of health care may assume that an*
37 *advance directive for psychiatric care complies with sections 2 to*
38 *17, inclusive, of this act and is valid.*

39 *2. Sections 2 to 17, inclusive, of this act create no*
40 *presumption concerning the intention of a person who has*
41 *revoked or has not executed an advance directive for psychiatric*
42 *care.*

43 **Sec. 12.** *Upon being presented with an advance directive for*
44 *psychiatric care, an attending physician or other provider of*



1 *health care shall make the advance directive a part of the*
2 *principal's medical record.*

3 **Sec. 13.** *1. A principal may revoke an advance directive for*
4 *psychiatric care at any time and in any manner, as long as the*
5 *principal is capable of making such a decision. The principal may*
6 *exercise this right of revocation in any manner by which the*
7 *principal is able to communicate an intent to revoke and by*
8 *notifying the attending physician or other provider of health care*
9 *of the revocation.*

10 *2. The attending physician or other provider of health care*
11 *shall make the revocation part of the principal's medical record.*

12 **Sec. 14.** *1. When acting under the authority of an advance*
13 *directive for psychiatric care, an attending physician or other*
14 *provider of health care shall comply with the advance directive*
15 *unless:*

16 *(a) Compliance, in the opinion of the attending physician or*
17 *other provider, is not consistent with generally accepted standards*
18 *of care for the provision of psychiatric care for the benefit of the*
19 *principal;*

20 *(b) Compliance is not consistent with the availability of*
21 *psychiatric care requested;*

22 *(c) Compliance is not consistent with applicable law;*

23 *(d) The principal is admitted to a mental health facility or*
24 *hospital pursuant to NRS 433A.145 to 433A.330, inclusive, and a*
25 *course of treatment is required pursuant to those provisions; or*

26 *(e) Compliance, in the opinion of the attending physician or*
27 *other provider, is not consistent with appropriate psychiatric care*
28 *in case of an emergency endangering the life or health of the*
29 *principal or another person.*

30 *2. In the event that one part of the advance directive is unable*
31 *to be followed because of any of the circumstances set forth in*
32 *subsection 1, all other parts of the advance directive must be*
33 *followed.*

34 **Sec. 15.** *A physician or other provider of health care who is*
35 *unwilling to comply with sections 2 to 17, inclusive, of this act*
36 *shall take all reasonable steps as promptly as practicable to*
37 *transfer the psychiatric care of the principal to another physician*
38 *or provider of health care.*

39 **Sec. 16.** *1. A physician or other provider of health care is*
40 *not subject to civil or criminal liability, or discipline for*
41 *unprofessional conduct, for giving effect to an advance directive*
42 *for psychiatric care or the direction of a person designated in the*
43 *advance directive pursuant to section 8 of this act in the absence*
44 *of knowledge of the revocation of the advance directive.*



1 2. *A physician or other provider of health care whose action*
2 *pursuant to sections 2 to 17, inclusive, of this act is in accord with*
3 *reasonable medical standards is not subject to civil or criminal*
4 *liability, or discipline for unprofessional conduct, with respect to*
5 *that action.*

6 3. *A person designated in an advance directive for psychiatric*
7 *care pursuant to section 8 of this act whose decision is made in*
8 *good faith pursuant to sections 2 to 17, inclusive, of this act is not*
9 *subject to civil or criminal liability, or discipline for*
10 *unprofessional conduct, with respect to that decision.*

11 **Sec. 17.** 1. *An advance directive for psychiatric care*
12 *executed in another state in compliance with the law of that state*
13 *or of this State is valid for purposes of sections 2 to 17, inclusive,*
14 *of this act.*

15 2. *An instrument executed anywhere before the effective date*
16 *of this act which clearly expresses the intent of the person*
17 *executing the instrument to direct the provision of psychiatric care*
18 *for the person when the person is otherwise rendered incapable of*
19 *communicating with his or her attending physician, if executed in*
20 *a manner which attests voluntary execution and has not been*
21 *subsequently revoked, is effective under sections 2 to 17, inclusive,*
22 *of this act.*

23 3. *As used in this section, "state" includes the District of*
24 *Columbia, the Commonwealth of Puerto Rico and a territory or*
25 *insular possession subject to the jurisdiction of the United States.*

26 **Sec. 18.** NRS 449.905 is hereby amended to read as follows:

27 449.905 "Advance directive" means an advance directive for
28 health care. The term includes:

29 1. A declaration governing the withholding or withdrawal of
30 life-sustaining treatment as set forth in NRS 449.535 to 449.690,
31 inclusive;

32 2. A durable power of attorney for health care as set forth in
33 NRS 162A.700 to 162A.865, inclusive;

34 3. *An advance directive for psychiatric care as set forth in*
35 *sections 2 to 17, inclusive, of this act;*

36 4. A do-not-resuscitate order as defined in NRS 450B.420; and

37 ~~4~~ 5. A Physician Order for Life-Sustaining Treatment form
38 as defined in NRS 449.693.

39 **Sec. 19.** NRS 449.945 is hereby amended to read as follows:

40 449.945 1. The provisions of NRS 449.900 to 449.965,
41 inclusive, do not require a provider of health care to inquire whether
42 a patient has an advance directive registered on the Registry or to
43 access the Registry to determine the terms of the advance directive.



1 2. A provider of health care who relies in good faith on the
2 provisions of an advance directive retrieved from the Registry is
3 immune from criminal and civil liability as set forth in:

4 (a) NRS 449.630, if the advance directive is a declaration
5 governing the withholding or withdrawal of life-sustaining treatment
6 executed pursuant to NRS 449.535 to 449.690, inclusive, or a
7 durable power of attorney for health care executed pursuant to NRS
8 162A.700 to 162A.865, inclusive;

9 (b) *Section 16 of this act, if the advance directive is an advance*
10 *directive for psychiatric care executed pursuant to sections 2 to 17,*
11 *inclusive, of this act;*

12 (c) NRS 449.691 to 449.697, inclusive, if the advance directive
13 is a Physician Order for Life-Sustaining Treatment form; or

14 ~~(e)~~ (d) NRS 450B.540, if the advance directive is a do-not-
15 resuscitate order as defined in NRS 450B.420.

16 **Sec. 20.** This act becomes effective upon passage and
17 approval.

