

Senate Bill No. 50—Committee on
Health and Human Services

CHAPTER.....

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 make a reasonable inquiry to determine whether a person has executed such an advance directive under certain circumstances; 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 under certain circumstances relating to compliance 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:

Under existing law, a person may provide an advance directive concerning his or her health care in the form of a durable power of attorney for health care decisions, a declaration governing the withholding or withdrawal of life-sustaining treatment, a Physician Order for Life-Sustaining Treatment form or a do-not-resuscitate order. (NRS 162A.700-162A.865, 449.535-449.690, 449.694, 449.800-449.860, 450B.420) Existing law also provides for a Registry of Advance Directives for Health Care, in which certain health records of a patient may be deposited to facilitate treatment of that patient by any health care provider. (NRS 449.900-449.965)

Section 8 of this bill authorizes a person who is of sound mind and who is 18 or more years of age or an emancipated minor to execute an advance directive for psychiatric care to direct any provider of health care on how he or she wishes psychiatric care to be provided in the event that he or she is incapable of making decisions concerning such care or communicating such decisions. **Section 8** also authorizes a person to designate another person to make decisions for him or her in the event that he or she is incapable of making such decisions. **Section 9** of this bill sets forth a sample form that may be used by a person wishing to execute an advance directive for psychiatric care. **Sections 10 and 11** of this bill establish the circumstances under which an advance directive for psychiatric care becomes operative. **Section 13** of this bill provides that a person may revoke his or her advance directive for psychiatric care at any time, as long as he or she is capable of making such a decision at the time. **Sections 12 and 13** of this bill require a physician or other provider of health care to enter an advance directive for psychiatric care or a revocation of such an advance directive into the medical record of the person executing the advance directive or revocation. **Section 17** of



this bill provides that an advance directive for psychiatric care validly executed pursuant to the laws of another state is valid in this State.

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

Section 16 of this bill: (1) requires a physician or other provider of health care to make a reasonable inquiry as to whether a person determined to be incapable of making decisions relating to his or her psychiatric care has executed an advance directive for psychiatric care; and (2) shields a physician or other provider of health care from civil or criminal liability, or discipline for unprofessional conduct, under certain circumstances for actions taken or not taken relating to a person's psychiatric care.

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

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

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

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

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

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

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



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

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

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

Sec. 8. 1. *A person of sound mind who is 18 or more years of age or who has been declared emancipated pursuant to NRS 129.080 to 129.140, inclusive, may execute at any time an advance directive for psychiatric care. The principal may designate another natural person of sound mind and 18 or more years of age to make decisions governing the provision of psychiatric care. The advance directive must be signed by the principal, or another at the principal’s direction, and attested by two witnesses. Neither of the witnesses may be:*

(a) The attending physician or provider of health care;

(b) An employee of the attending physician or provider of health care;

(c) An owner or operator of a medical facility in which the principal is a patient or resident or an employer of such an owner or operator; or

(d) A person appointed as an attorney-in-fact by the advance directive.

2. *An advance directive becomes effective upon its proper execution and remains valid for a period of 2 years after the date of its execution unless revoked.*

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

**NOTICE TO PERSON MAKING AN
ADVANCE DIRECTIVE FOR
PSYCHIATRIC CARE**

**THIS IS AN IMPORTANT LEGAL DOCUMENT. IT
CREATES AN ADVANCE DIRECTIVE FOR
PSYCHIATRIC CARE. BEFORE SIGNING THIS
DOCUMENT YOU SHOULD KNOW THESE
IMPORTANT FACTS:**

**THIS DOCUMENT ALLOWS YOU TO MAKE
DECISIONS IN ADVANCE ABOUT CERTAIN TYPES**



OF PSYCHIATRIC CARE. THE INSTRUCTIONS YOU INCLUDE IN THIS ADVANCE DIRECTIVE WILL BE FOLLOWED IF TWO PROVIDERS OF HEALTH CARE, ONE OF WHOM MUST BE A PHYSICIAN OR LICENSED PSYCHOLOGIST AND THE OTHER OF WHOM MUST BE A PHYSICIAN, A PHYSICIAN ASSISTANT, A LICENSED PSYCHOLOGIST, A PSYCHIATRIST OR AN ADVANCED PRACTICE REGISTERED NURSE WHO HAS THE PSYCHIATRIC TRAINING AND EXPERIENCE PRESCRIBED BY THE STATE BOARD OF NURSING PURSUANT TO NRS 632.120, DETERMINES THAT YOU ARE INCAPABLE OF MAKING OR COMMUNICATING TREATMENT DECISIONS. OTHERWISE YOU WILL BE CONSIDERED CAPABLE TO GIVE OR WITHHOLD CONSENT FOR THE TREATMENTS. YOUR INSTRUCTIONS MAY BE OVERRIDDEN IF YOU ARE BEING HELD IN ACCORDANCE WITH CIVIL COMMITMENT LAW. BY EXECUTING A DURABLE POWER OF ATTORNEY FOR HEALTH CARE AS SET FORTH IN NRS 162A.700 TO 162A.865, INCLUSIVE, YOU MAY ALSO APPOINT A PERSON AS YOUR AGENT TO MAKE TREATMENT DECISIONS FOR YOU IF YOU BECOME INCAPABLE. THIS DOCUMENT IS VALID FOR TWO YEARS FROM THE DATE YOU EXECUTE IT UNLESS YOU REVOKE IT. YOU HAVE THE RIGHT TO REVOKE THIS DOCUMENT AT ANY TIME YOU HAVE NOT BEEN DETERMINED TO BE INCAPABLE. YOU MAY NOT REVOKE THIS ADVANCE DIRECTIVE WHEN YOU ARE FOUND INCAPABLE BY TWO PROVIDERS OF HEALTH CARE, ONE OF WHOM MUST BE A PHYSICIAN OR LICENSED PSYCHOLOGIST AND THE OTHER OF WHOM MUST BE A PHYSICIAN, A PHYSICIAN ASSISTANT, A LICENSED PSYCHOLOGIST, A PSYCHIATRIST OR AN ADVANCED PRACTICE REGISTERED NURSE WHO HAS THE PSYCHIATRIC TRAINING AND EXPERIENCE PRESCRIBED BY THE STATE BOARD OF NURSING PURSUANT TO NRS 632.120. A REVOCATION IS EFFECTIVE WHEN IT IS COMMUNICATED TO YOUR ATTENDING PHYSICIAN OR OTHER HEALTH CARE PROVIDER. THE PHYSICIAN OR OTHER PROVIDER SHALL NOTE THE



REVOCATION IN YOUR MEDICAL RECORD. TO BE VALID, THIS ADVANCE DIRECTIVE MUST BE SIGNED BY TWO QUALIFIED WITNESSES, PERSONALLY KNOWN TO YOU, WHO ARE PRESENT WHEN YOU SIGN OR ACKNOWLEDGE YOUR SIGNATURE. IT MUST ALSO BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC.

NOTICE TO PHYSICIAN OR OTHER PROVIDER OF HEALTH CARE

Under Nevada law, a person may use this advance directive to provide consent or refuse to consent to future psychiatric care if the person later becomes incapable of making or communicating those decisions. By executing a durable power of attorney for health care as set forth in NRS 162A.700 to 162A.865, inclusive, the person may also appoint an agent to make decisions regarding psychiatric care for the person when incapable. A person is "incapable" for the purposes of this advance directive when in the opinion of two providers of health care, one of whom must be a physician or licensed psychologist and the other of whom must be a physician, a physician assistant, a licensed psychologist, a psychiatrist or an advanced practice registered nurse who has the psychiatric training and experience prescribed by the State Board of Nursing pursuant to NRS 632.120, the person currently lacks sufficient understanding or capacity to make or communicate decisions regarding psychiatric care. If a person is determined to be incapable, the person may be found capable when, in the opinion of the person's attending physician or an advanced practice registered nurse who has the psychiatric training and experience prescribed by the State Board of Nursing pursuant to NRS 632.120 and has an established relationship with the person, the person has regained sufficient understanding or capacity to make or communicate decisions regarding psychiatric care. This document becomes effective upon its proper execution and remains valid for a period of 2 years after the date of its execution 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.

**ADVANCE DIRECTIVE FOR
PSYCHIATRIC CARE**

I,....., being an adult of sound mind or an emancipated minor, willfully and voluntarily make this advance directive for psychiatric care to be followed if it is determined by two providers of health care, one of whom must be my attending physician or a licensed psychologist and the other of whom must be a physician, a physician assistant, a licensed psychologist, a psychiatrist or an advanced practice registered nurse who has the psychiatric training and experience prescribed by the State Board of Nursing pursuant to NRS 632.120, 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 beyond the specific number of days, if any, provided in this advance directive.

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:

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. [.....]



STATE OF NEVADA
COUNTY OF

CERTIFICATION OF NOTARY PUBLIC

STATE OF NEVADA
COUNTY OF

I,....., a Notary Public for the County cited above in the State of Nevada, hereby certify that..... appeared before me and swore or affirmed to me and to the witnesses in my presence that this instrument is an advance directive for psychiatric care and that he or she willingly and voluntarily made and executed it as his or her free act and deed for the purposes expressed in it.

I further certify that..... and....., witnesses, appeared before me and swore or affirmed that each witnessed..... sign the attached advance directive for psychiatric care believing him or her to be of sound mind and also swore that at the time each witnessed the signing, each person was: (1) not the attending physician or provider of health care, or an employee of the physician or provider, of the principal; (2) not the owner or operator, or employee of the owner or operator, of a medical facility in which the principal is a patient or resident; and (3) not a person appointed as an attorney-in-fact by the attached advance directive for psychiatric care. I further certify that I am satisfied as to the genuineness and due execution of the instrument.

This is the..... day of.....
.....

Notary Public

My Commission expires:

Sec. 10. *An advance directive for psychiatric care becomes operative when it is communicated to a physician or any other provider of health care and the principal is determined by two providers of health care, one of whom must be the attending physician or a licensed psychologist and the other of whom must be a physician, a physician assistant, a licensed psychologist, a psychiatrist or an advanced practice registered nurse who has the psychiatric training and experience prescribed by the State Board*



of Nursing pursuant to NRS 632.120, to be no longer able to make or communicate decisions regarding the provision of psychiatric care. If the principal is determined to be no longer able to make or communicate decisions regarding the provision of psychiatric care and subsequently the principal's attending physician or an advance practice registered nurse who has the psychiatric training and experience prescribed by the State Board of Nursing pursuant to NRS 632.120 and has an established relationship with the principal determines that the principal has regained the ability to make or communicate decisions regarding the provision of psychiatric care, the advance directive is no longer operative. When the advance directive is operative, a physician and any other provider of health care shall act in accordance with the provisions of the advance directive and with the instructions of a person designated pursuant to section 8 of this act, or comply with the requirements of section 15 of this act to transfer the care of the principal.

Sec. 11. *Sections 2 to 17, inclusive, of this act create no presumption concerning the intention of a person who has revoked or has not executed an advance directive for psychiatric care.*

Sec. 12. *Upon being presented with an advance directive for psychiatric care, an attending physician or other provider of health care shall make the advance directive a part of the principal's medical record.*

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

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

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

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



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

(c) Compliance is not consistent with applicable law;

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

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

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

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

Sec. 16. *1. If two providers of health care, one of whom is a physician or a licensed psychologist and the other of whom is a physician, a physician assistant, a licensed psychologist, a psychiatrist or an advanced practice registered nurse who has the psychiatric training and experience prescribed by the State Board of Nursing pursuant to NRS 632.120, determine that a person is incapable of consenting or refusing to consent to psychiatric care, a physician or other provider of health care treating the person must make a reasonable inquiry as to whether the person has executed an advance directive for psychiatric care.*

2. A physician or other provider of health care acting in accord with reasonable medical standards is not subject to civil or criminal liability, or discipline for unprofessional conduct, for:

(a) Complying with a direction given or a decision made by a person that the physician or other provider believes, in good faith, has authority to act as an agent for a principal concerning decisions relating to psychiatric care;

(b) Refusing to comply with a direction given or a decision made by a person based on a good faith belief that the person lacks the authority to act as an agency for a principal concerning decisions relating to psychiatric care;

(c) Giving effect to an advance directive for psychiatric care that the physician or other provider assumed was valid;



(d) Disclosing information concerning psychiatric care to another person based on a good faith belief that such disclosure was either authorized or required;

(e) Refusing to comply with a direction given or a decision made by a person because of conflicts with the physician's or other provider's contractual network or payment policy restrictions;

(f) Refusing to comply with a direction given or a decision made by a person if such direction or decision violates accepted medical or clinical standards of care;

(g) Making a determination that causes an advance directive to become effective; or

(h) Failing to determine that a person lacks sufficient understanding or capacity to make or communicate decisions regarding psychiatric care, thereby preventing an advance directive from becoming effective.

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

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

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

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

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



Sec. 18. NRS 449.905 is hereby amended to read as follows:
449.905 “Advance directive” means an advance directive for health care. The term includes:

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 20. This act becomes effective upon passage and approval.

