

AN ACT relating to an advance directive for mental health treatment.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

**SECTION 1. A NEW SECTION OF KRS CHAPTER 202A IS CREATED
TO READ AS FOLLOWS:**

As used in Sections 1 to 7 of this Act, unless the context requires otherwise:

- (1) "Advance directive for mental health treatment" or "advance directive" means a written document, or a document in a form consistent with the provisions of the federal Americans with Disabilities Act (ADA), made voluntarily by a grantor in accordance with the provisions of Sections 1 to 7 of this Act that provides instructions for mental health treatment.*
- (2) "Grantor" means an adult eighteen (18) years of age or older whose right to make health care decisions or to execute legal documents has not been limited and who has executed an advance directive for mental health treatment.*
- (3) "Surrogate" means an adult who has not provided health care services to the grantor, who has been designated by the grantor to act, and who agrees to act on behalf of the grantor in accordance with Sections 1 to 7 of this Act. The term includes an alternate surrogate.*
- (4) "Procedures for emergency intervention" means the use of physical or chemical restraint or seclusion in an emergency situation.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

- (1) *An adult may execute an advance directive for mental health treatment that includes one (1) or more of the following:*
- (a) *Refusal of specific psychotropic medications, but not an entire class of psychotropic medications. This refusal may be due to factors that include but are not limited to their lack of efficacy, known drug sensitivity, or previous experience of adverse reactions;*
 - (b) *Refusal of electric shock therapy (ECT);*
 - (c) *Stated preferences for psychotropic medications;*
 - (d) *Stated preferences for procedures for emergency interventions; and*
 - (e) *Provision of information in any area specified by the grantor.*
- (2) *The execution of an advance directive shall be complete when signed by the grantor and:*
- (a) *Signed by two (2) adult witnesses who attest that the grantor:*
 - 1. *Is known to them;*
 - 2. *Signed the advance directive in their presence; and*
 - 3. *Did not appear to be under duress, fraud, or undue influence; or*
 - (b) *Acknowledged before a notary public or other person authorized to administer oaths.*

- (3) *The following persons shall not serve as a witness, a notary public, or other person authorized to administer oaths to the signing of an advance directive:*
 - (a) *The grantor's current health care provider or a relative of the current health care provider; and*
 - (b) *An owner, operator, employee, or relative of an owner or operator of a health facility in which the grantor is a client or resident.*
- (4) *An advance directive shall not override the grantor's right under federal and state law to refuse treatment.*
- (5) *The grantor or the surrogate of the grantor shall be responsible for providing a copy of the advance directive to the grantor's health care provider and health care facility where the grantor is a patient.*
- (6) *An advance directive for mental health treatment shall be honored in any setting, except a hospital emergency room or a hospital emergency department, that is required to honor advance directives under Title XVIII or Title XIX of the federal Social Security Act.*
- (7) *A health care provider, health care facility, surrogate, or other responsible party shall not be subject to criminal prosecution or civil liability if acting in agreement with an advance directive for mental health treatment executed in accordance with Sections 1 to 7 of this Act or if acting in good faith without knowledge of the existence or revocation of an advance directive.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

- (1) *A surrogate designated by a grantor in an advance directive for mental health treatment shall act on behalf of the grantor in accordance with the desires of the grantor as indicated in the advance directive and may override the advance directive only if there is substantial medical evidence that failing to do so would result in harm to the grantor.*
- (2) *When acting on behalf of the grantor, the surrogate shall consider the recommendations of the health care provider and honor the decisions made by the grantor as expressed in the advance directive.*
- (3) *If the grantor's instructions or preferences are not stated in the advance directive, the surrogate may act in good faith on behalf of the grantor in the manner that the surrogate believes the grantor would act.*
- (4) *A surrogate may resign at any time by giving written notice to the grantor, to the immediate successor surrogate, if any, to the attending health care provider, or to the health care facility.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

- (1) *A health care provider or health care facility shall provide mental health treatment that complies with the instructions in an advance directive to the fullest extent possible when the instructions are within standards for mental and physical health care and permitted by state and federal law.*

- (2) *A health care provider or health care facility may override expressed refusals of treatment only if:*
 - (a) *A court order contradicts the advance directive; or*
 - (b) *There is an emergency endangering a person's life or posing a serious risk to physical health.*
- (3) *Deviations from expressed preferences in an advance directive shall be documented by the health care provider or health care facility in the grantor's medical record.*
- (4) *A health care provider or health care facility that refuses to comply with an advance directive of a grantor or a decision made by a surrogate shall:*
 - (a) *Immediately inform the grantor or surrogate, if one is designated, of the refusal; and*
 - (b) *Not impede the transfer of the grantor to another health care provider or health care facility.*

SECTION 5. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

An advance directive may be revoked by:

- (1) *A document that is signed and dated by the grantor and declares an intention to revoke;*
- (2) *An oral statement of intent to revoke made by a grantor to a health care provider in the presence of some other person; or*
- (3) *Destruction of the document by the grantor or by some person in the grantor's presence at the grantor's direction.*

**SECTION 6. A NEW SECTION OF KRS CHAPTER 202A IS CREATED
TO READ AS FOLLOWS:**

An advance directive for mental health treatment shall be in substantially the following form:

"Advance directive for mental health treatment"

I, _____, willfully and voluntarily execute this advance directive for mental health treatment. I want the instructions in this advance directive to be followed as described below.

Designated surrogate

___ I am naming a surrogate to see that my instructions for mental health treatment are carried out.

___ I am not naming a surrogate to see that my instructions for mental health treatment are carried out.

I designate _____ to act as my surrogate. If this person withdraws or is unwilling to act on my behalf, or if I revoke that person's authority to act as my surrogate, I designate _____ to act as my alternate surrogate.

If I do not designate a surrogate, if my surrogate and alternate surrogate withdraw or are unwilling to act on my behalf, or if I revoke their authority to act, then the health care provider and health care facility may proceed to render treatment in accordance with my instructions as described here and in accordance with standards for mental and physical health care.

The person acting as my surrogate is authorized to act in accordance with the content of this advance directive and may override the advance directive if, and only if, there is substantial medical evidence that failing to do so would result in harm to me. If my instructions and preferences are not stated in the advance directive, the surrogate may act in good faith in making treatment decisions in the manner in which the surrogate believes I would act.

Psychotropic medication provisions

I may indicate below any refusals of treatment with specific psychotropic medications, not to include an entire class of medications, due to factors that may include but are not limited to lack of efficacy, known drug sensitivity, or experience of adverse reaction:

I specifically do not consent and do not authorize my surrogate to consent to the administration of the following medications or their respective brand-name or generic equivalents for the reasons given:

Specific psychotropic medication and Reason for refusal

I may list below any specific psychotropic medications that I would be willing to have administered to me if additional medications become necessary:

Specific psychotropic medications:

Electroconvulsive therapy provisions

Below are my instructions regarding electroconvulsive therapy (ECT):

 I consent to electroconvulsive therapy (ECT) if it is deemed clinically appropriate to treat my condition.

 I do not consent to electroconvulsive therapy (ECT).

Preferred procedures for emergency interventions

I may state preferences for procedures for emergency interventions to be used when necessary for my protection or the protection of others. I understand that I am requesting consideration of my preferences for procedures for emergency interventions but that my surrogate, my health care provider, and the health care facility where I am a patient are not subject to civil liability for not abiding by these preferences. I understand that in the case of possible harm to myself or others, my health care provider or the health care facility may need to use procedures that override my stated preferences. If during an admission or while a patient in a health care facility, it is determined that I am engaging in behavior that requires emergency intervention, my preferences regarding the procedures to be used during an emergency intervention and the order that I prefer the interventions to be used are as follows:

Intervention _____ *Order of preference* _____ *Reason for this preference* _____

Seclusion _____

Physical restraints _____

*Seclusion and physical
restraint combined* _____

Medication by injection _____

Medication in pill form _____

Liquid medication _____

Other: _____

Signed this ____ *day of* _____, 20__

Signature of grantor: _____

Address of grantor: _____

In my presence, the grantor voluntarily dated and signed this writing or directed it to be dated and signed. I am not the grantor's current health care provider, a relative of the current health care provider, or an owner, operator, employee or relative of an owner or operator of a health facility in which the grantor is a client or resident.

Signatures of witnesses: _____

Surrogate contact information (if designated):

Name: _____

Address: _____

Telephone: _____

Signed this ____ *day of* _____, 20__

Signature of surrogate: _____

Alternate surrogate contact information (if designated):

Name: _____

Address: _____

Telephone _____

Signed this ____ day of _____, 20__

Signature of alternate surrogate: _____

SECTION 7. A NEW SECTION OF KRS CHAPTER 202A IS CREATED TO READ AS FOLLOWS:

Sections 1 to 7 of this Act may be cited as the Kentucky Advance Directive for Mental Health Act.

HB 99 - AMENDMENTS

HCS - Retain original provisions; make technical corrections; and provide that an advance directive for mental health treatment is not required to be honored in a hospital emergency room.