

53-21-153. Mental health advance directive authorized -- content -- cause of action created -- definitions. (1) An individual 18 years of age or older with mental capacity may voluntarily execute a mental health advance directive providing that if the individual is treated for a mental disorder at an inpatient facility, the directions concerning who must be notified and who may visit the individual, as provided in this section, are to be followed. An inpatient facility that is furnished a copy of a mental health advance directive shall comply with the directive and shall make the directive a part of the individual's medical record.

(2) The directive may address any combination of the following subjects:

(a) who should be notified promptly in the event of the individual's admission to or treatment at the facility;

(b) who should or should not be allowed to visit the individual at the facility; and

(c) the duration of the directive.

(3) The directive authorized in subsection (1) must be in writing and must contain:

(a) a statement that the individual has the mental capacity to execute the directive and that the directive is executed voluntarily;

(b) a statement that once signed, a directive of which the facility is furnished a copy takes effect upon the determination of the lack of mental capacity by the treating mental health professional of the individual and remains in effect until:

(i) revoked by the individual, orally or in writing, at a time that the individual has the mental capacity to revoke the advance directive, as determined by the treating mental health professional;

(ii) the directive expires by its own terms; or

(iii) the individual dies;

(c) the signature of the individual; and

(d) the signature of two witnesses.

(4) (a) An individual may revoke a mental health advance directive provided that the mental health professional chosen by or provided for the individual determines in good faith that the individual has sufficient mental capacity to revoke the directive. The inpatient facility shall make a valid revocation a part of the individual's medical record.

(b) An advance directive is valid and enforceable only with respect to the matters provided for in subsection (2) even if the directive addresses subjects in addition to those provided for in this section.

(5) If an inpatient facility fails to act in accordance with a mental health advance directive of which the facility was furnished a copy, an individual who has executed the mental health advance directive or who has the right to be notified or to visit the individual at the facility pursuant to a mental health advance directive has a cause of action against the facility for injunctive relief and reasonable costs and attorney fees incurred in bringing the action.

(6) As used in this section, the following definitions apply:

(a) "Advance directive" or "directive" means a writing complying with the requirements of this section.

(b) "Inpatient facility" or "facility" means a health care facility that provides emergency, crisis, or acute care to a person with a mental disorder.

(c) (i) "Lack of mental capacity" means that an individual does not have sufficient ability to make or communicate decisions regarding a need for treatment.

(ii) The lack of mental capacity does not require that a person be legally determined to be an incapacitated person, as defined in [72-5-101](#). However, a person who is under a current legal determination of being an incapacitated person has a lack of mental capacity.

(d) "Mental capacity" means sufficient ability to make or communicate decisions regarding a need for treatment.