

House Bill 752 (AS PASSED HOUSE AND SENATE)

By: Representatives Cooper of the 43<sup>rd</sup>, Dempsey of the 13<sup>th</sup>, Hogan of the 179<sup>th</sup>, Oliver of the 82<sup>nd</sup>, Hatchett of the 150<sup>th</sup>, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 37 of the Official Code of Georgia Annotated, relating to mental health, so  
2 as to provide for a psychiatric advance directive; to provide for a competent adult to express  
3 his or her mental health care treatment preferences and desires directly through instructions  
4 written in advance and indirectly through appointing an agent to make mental health care  
5 decisions on behalf of that person; to provide a short title; to provide for intent; to provide  
6 for definitions; to provide for the scope, use, and authority of a psychiatric advance directive;  
7 to provide for the appointment, powers, duties, and access to information of a mental health  
8 care agent; to provide for limitations on serving as a mental health care agent and for an  
9 agent's ability to withdraw as agent; to provide for revocation of a psychiatric advance  
10 directive; to provide for the use and effectiveness of a psychiatric advance directive; to  
11 provide for the responsibilities and duties of physicians and other providers using a  
12 psychiatric advance directive; to provide for civil and criminal immunity under certain  
13 circumstances; to provide a statutory psychiatric advance directive form; to provide for  
14 construction of such form; to amend Titles 10, 16, 19, 29, 31, 37, and 49 of the Official Code  
15 of Georgia Annotated, relating to commerce and trade, crimes and offenses, domestic  
16 relations, guardian and ward, health, mental health, and social services, respectively, so as  
17 to provide for interaction and relationship with advance directives for health care; to provide  
18 for application; to provide for statutory construction; to authorize a health care facility to

19 prepare or offer to prepare an advance directive for health care if there is no coercion and the  
20 person consents; to provide for conforming references and consistent terminology; to provide  
21 for related matters; to repeal conflicting laws; and for other purposes.

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

23 PART I  
24 SECTION 1-1.

25 Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended by  
26 adding a new chapter to read as follows:

27 "CHAPTER 11

28 37-11-1.

29 This chapter shall be known and may be cited as the 'Psychiatric Advance Directive Act.'

30 37-11-2.

31 This chapter is enacted in recognition of the fundamental right of an individual to have  
32 power over decisions relating to his or her mental health care as a matter of public policy.

33 37-11-3.

34 As used in this chapter, the term:

35 (1) 'Capable' means not incapable of making mental health care decisions.

36 (2) 'Competent adult' means a person of sound mind who is 18 years of age or older or  
37 is an emancipated minor.

38 (3) 'Declarant' means a person who has executed a psychiatric advance directive  
39 authorized by this chapter.

40 (4) 'Facility' means a hospital, skilled nursing facility, hospice, institution, home,  
41 residential or nursing facility, treatment facility, and any other facility or service which  
42 has a valid permit or provisional permit issued under Chapter 7 of Title 31 or which is  
43 licensed, accredited, or approved under the laws of any state, and includes hospitals  
44 operated by the United States government or by any state or subdivision thereof and  
45 community service boards.

46 (5) 'Incapable of making mental health care decisions' means that, in the opinion of a  
47 physician or licensed psychologist who has personally examined a declarant, or in the  
48 opinion of a court, a declarant lacks the capacity to understand the risks and benefits of,  
49 and the alternatives to, a mental health care decision under consideration and is unable  
50 to give or communicate rational reasons for mental health care decisions because of  
51 impaired thinking, impaired ability to receive and evaluate information, or other cognitive  
52 disability.

53 (6) 'Mental health care' means any care, treatment, service, or procedure to maintain,  
54 diagnose, treat, or provide for a declarant's mental or emotional illness, developmental  
55 disability, or addictive disease.

56 (7) 'Mental health care agent' or 'agent' means a person appointed by a declarant to act  
57 for and on behalf of such declarant to make decisions related to consent, refusal, or  
58 withdrawal of any type of mental health care when such declarant is incapable of making  
59 mental health care decisions for himself or herself. Such term shall include any back-up  
60 mental health care agent appointed by a declarant.

61 (8) 'Physician' means a person lawfully licensed in this state to practice medicine  
62 pursuant to Article 2 of Chapter 34 of Title 43 and, if the declarant is receiving mental  
63 health care in another state, a person lawfully licensed in such state.

64 (9) 'Provider' means any person administering mental health care who is licensed,  
65 certified, or otherwise authorized or permitted by law to administer mental health care in  
66 the ordinary course of business or the practice of a profession, including, but not limited  
67 to, professional counselors, psychologists, clinical social workers, marriage and family  
68 therapists, and clinical nurse specialists in psychiatric and mental health; a physician; or  
69 any person acting for any such authorized person.

70 (10) 'Psychiatric advance directive' or 'directive' means a written document voluntarily  
71 executed by a person in accordance with the requirements of Code Section 37-11-9.

72 37-11-4.

73 (a) A competent adult may execute a psychiatric advance directive containing mental  
74 health care preferences, information, or instructions regarding his or her mental health care  
75 that authorizes and consents to a provider or facility acting in accordance with such  
76 directive. A directive may include consent to or refusal of specified mental health care.

77 (b) A psychiatric advance directive may include, but shall not be limited to:

78 (1) The names and telephone numbers of individuals to contact in the event a declarant  
79 has a mental health crisis;

80 (2) Situations that have been known to cause a declarant to experience a mental health  
81 crisis;

82 (3) Responses that have been known to de-escalate a declarant's mental health crisis;

83 (4) Responses that may assist a declarant to remain in such declarant's home during a  
84 mental health crisis;

85 (5) The types of assistance that may help stabilize a declarant if it becomes necessary to  
86 enter a facility; and

87 (6) Medications a declarant is taking or has taken in the past and the effects of such  
88 medications.

89 (c) A psychiatric advance directive may include a mental health care agent.

90 (d) If a declarant chooses not to appoint an agent, the instructions and desires of a  
91 declarant as set forth in the directive shall be followed to the fullest extent possible by  
92 every provider or facility to whom the directive is communicated, subject to the right of the  
93 provider or facility to refuse to comply with the directive as set forth in Code Section  
94 37-11-12.

95 (e) A person shall not be required to execute or refrain from executing a directive as a  
96 criterion for insurance, as a condition for receiving mental health care or physical health  
97 care services, or as a condition of discharge from a facility.

98 (f) Unless a declarant indicates otherwise, a psychiatric advance directive shall take  
99 precedence over any advance directive for health care executed pursuant to Chapter 32 of  
100 Title 31; durable power of attorney for health care creating a health care agency under the  
101 former Chapter 36 of Title 31, as such chapter existed on and before June 30, 2007; health  
102 care proxy; or living will that a declarant executed prior to executing a psychiatric advance  
103 directive to the extent that such other documents relate to mental health care and are  
104 inconsistent with the psychiatric advance directive.

105 (g) No provision of this chapter shall be construed to bar use by a declarant of an advance  
106 directive for health care under Chapter 32 of Title 31.

107 37-11-5.

108 (a) A declarant may designate a competent adult to act as his or her agent to make  
109 decisions about his or her mental health care. An alternative agent may also be designated.

110 (b) An agent shall have no authority to make mental health care decisions when a declarant  
111 is capable.

112 (c) The authority of an agent shall continue in effect so long as the directive appointing  
113 such agent is in effect or until such agent has withdrawn.

114 (d) An agent appointed by a declarant:

- 115 (1) Shall be authorized to make any and all mental health care decisions on behalf of  
116 such declarant which such declarant could make if such declarant were capable;
- 117 (2) Shall exercise granted powers in a manner consistent with the intent and desires of  
118 such declarant. If such declarant's intentions and desires are not expressed or are unclear,  
119 the agent shall act in such declarant's best interests, considering the benefits, burdens, and  
120 risks of such declarant's circumstances and mental health care options;
- 121 (3) Shall not be under any duty to exercise granted powers or to assume control of or  
122 responsibility for such declarant's mental health care; but, when granted powers are  
123 exercised, the agent shall be required to use due care to act for the benefit of such  
124 declarant in accordance with the terms of the psychiatric advance directive;
- 125 (4) Shall not make a mental health care decision different from or contrary to such  
126 declarant's instruction if such declarant is capable at the time of the request for consent  
127 or refusal of mental health care;
- 128 (5)(A) May make a mental health care decision different from or contrary to such  
129 declarant's instruction in such declarant's psychiatric advance directive if:
- 130 (i) Such declarant's provider or facility determines in good faith at the time of consent  
131 or refusal of mental health care that the mental health care requested or refused in the  
132 directive's instructions is:
- 133 (I) Unavailable;
- 134 (II) Medically contraindicated in a manner that would result in substantial harm to  
135 such declarant if administered; or
- 136 (III) In the opinion of the provider or facility, inconsistent with reasonable medical  
137 standards to benefit such declarant or has proven ineffective in treating such  
138 declarant's mental health condition; and
- 139 (ii) The mental health care requested or refused in the directive's instructions is  
140 unlikely to be delivered by another provider or facility in the community under the  
141 circumstances.

142 (B) In the event the agent exercises authority under one of the circumstances set forth  
143 in subparagraph (A) of this paragraph, the agent shall exercise the authority in a manner  
144 consistent with the intent and desires of such declarant. If such declarant's intentions  
145 and desires are not expressed or are unclear, the agent shall act in such declarant's best  
146 interests, considering the benefits, burdens, and risks of such declarant's circumstances  
147 and mental health care options;

148 (6) Shall not delegate authority to make mental health care decisions; and

149 (7) Has the following general powers, unless expressly limited in the psychiatric advance  
150 directive:

151 (A) To sign and deliver all instruments, negotiate and enter into all agreements, and do  
152 all other acts reasonably necessary to exercise the powers granted to the agent;

153 (B) To consent to, authorize, refuse, or withdraw consent to any providers and any type  
154 of mental health care of such declarant, including any medication program;

155 (C) To request and consent to admission or discharge from any facility; and

156 (D) To contract for mental health care and facilities in the name of and on behalf of  
157 such declarant, and the agent shall not be personally financially liable for any services  
158 or mental health care contracted for on behalf of such declarant.

159 (e) A court may remove a mental health care agent if it finds that an agent is not acting in  
160 accordance with the declarant's treatment instructions as expressed in his or her directive.

161 37-11-6.

162 (a) Except to the extent that a right is limited by a directive or by any state or federal law  
163 or regulation, an agent shall have the same right as a declarant to receive information  
164 regarding the proposed mental health care and to receive, review, and consent to disclosure  
165 of medical records, including records relating to the treatment of a substance use disorder,  
166 relating to that mental health care. All of a declarant's mental health information and

167 medical records shall remain otherwise protected under state and federal privilege, and this  
168 right of access shall not waive any evidentiary privilege.

169 (b) At the declarant's expense and subject to reasonable rules of a provider or facility to  
170 prevent disruption of the declarant's mental health care, an agent shall have the same right  
171 the declarant has to examine, copy, and consent to disclosure of all the declarant's medical  
172 records that the agent deems relevant to the exercise of the agent's powers, whether the  
173 records relate to mental health or any other medical condition and whether they are in the  
174 possession of or maintained by any physician, psychiatrist, psychologist, therapist, facility,  
175 or other health care provider, despite contrary provisions of any other statute or rule of law.

176 (c) The authority given an agent by this Code section shall include all rights that a  
177 declarant has under the federal Health Insurance Portability and Accountability Act of  
178 1996, P.L. 104-191, and its implementing regulations regarding the use and disclosure of  
179 individually identifiable health information and other medical records.

180 37-11-7.

181 The following persons shall not serve as a declarant's agent:

182 (1) Such declarant's provider or an employee of that provider unless such employee is  
183 a family member, friend, or associate of such declarant and is not directly involved in  
184 such declarant's mental health care; or

185 (2) An employee of the Department of Behavioral Health and Developmental Disabilities  
186 or of a local public mental health agency or of any organization that contracts with a local  
187 public mental health authority unless such employee is a family member, friend, or  
188 associate of such declarant and is not directly involved in such declarant's mental health  
189 care.



190 37-11-8.

191 An agent may withdraw by giving written notice to a declarant. If such declarant is  
192 incapable of making mental health care decisions, such agent may withdraw by giving  
193 written notice to the provider or facility that is providing mental health care to the declarant  
194 at the time of the agent's withdrawal. Any provider or facility that receives an agent's  
195 withdrawal shall document the withdrawal as part of such declarant's medical record.

196 37-11-9.

197 (a) A psychiatric advance directive shall be effective only if it is signed by the declarant  
198 and witnessed by two competent adults, but such witnesses shall not be required to be  
199 together or present when such declarant signs the directive. The witnesses shall attest that  
200 the declarant is known to them, appears to be of sound mind, is not under duress, fraud, or  
201 undue influence, and signed his or her directive in the witness's presence or acknowledges  
202 signing his or her directive. For purposes of this subsection, the term 'of sound mind'  
203 means having a decided and rational desire to create a psychiatric advance directive.

204 (b) A validly executed psychiatric advance directive shall become effective upon its proper  
205 execution and shall remain in effect until revoked by the declarant.

206 (c) The following persons shall not serve as witnesses to the signing of a directive:

207 (1) A provider who is providing mental health care to the declarant at the time such  
208 directive is being executed or an employee of such provider unless such employee is a  
209 family member, friend, or associate of such declarant and is not directly involved in the  
210 declarant's mental health care;

211 (2) An employee of the Department of Behavioral Health and Developmental Disabilities  
212 or of a local public mental health agency or of any organization that contracts with a local  
213 public mental health authority unless such person is a family member, friend, or associate  
214 of such declarant and is not directly involved in the declarant's mental health care; or

215 (3) A person selected to serve as the declarant's mental health care agent.

216 (d) A person who witnesses a psychiatric advance directive in good faith and in  
217 accordance with this chapter shall not be civilly liable or criminally prosecuted for actions  
218 taken by an agent.

219 (e) A copy of a directive executed in accordance with this Code section shall be valid and  
220 have the same meaning and effect as the original document.

221 37-11-10.

222 (a) A directive may be revoked in whole or in part at any time by the declarant, so long as  
223 such declarant is capable, by any of the following methods:

224 (1) By completing a new directive that has provisions which are inconsistent with the  
225 provisions of a previously executed directive; an advance directive for health care  
226 executed pursuant to Chapter 32 of Title 31; a durable power of attorney for health care  
227 creating a health care agency under the former Chapter 36 of Title 31, as such chapter  
228 existed on and before June 30, 2007; a health care proxy; or a living will; provided,  
229 however, that such revocation shall extend only so far as the inconsistency exists between  
230 the documents and any part of a prior document that is not inconsistent with a subsequent  
231 document shall remain unrevoked;

232 (2) By being obliterated, burned, torn, or otherwise destroyed by the declarant or by  
233 some person in the declarant's presence and at the declarant's direction indicating an  
234 intention to revoke;

235 (3) By a written revocation clearly expressing the intent of the declarant to revoke the  
236 directive signed and dated by the declarant or by a person acting at the declarant's  
237 direction. If the declarant is receiving mental health care in a facility, revocation of a  
238 directive will become effective only upon communication to the attending provider by  
239 the declarant or by a person acting at the declarant's direction. The attending provider  
240 shall record in the declarant's medical record the time and date when the attending  
241 provider received notification of the written revocation; or

242 (4) By an oral or any other clear expression of the intent to revoke the directive in the  
243 presence of a witness 18 years of age or older who, within 30 days of the expression of  
244 such intent, signs and dates a writing confirming that such expression of intent was made.  
245 If the declarant is receiving mental health care in a facility, revocation of a directive will  
246 become effective only upon communication to the attending provider by the declarant or  
247 by a person acting at the declarant's direction. The attending provider shall record in the  
248 declarant's medical record the time, date, and place of the revocation and the time, date,  
249 and place, if different, when the attending provider received notification of the  
250 revocation. Any person, other than the mental health care agent, to whom an oral or other  
251 nonwritten revocation of a directive is communicated or delivered shall make all  
252 reasonable efforts to inform the mental health care agent of that fact as promptly as  
253 possible.

254 (b) Unless a directive expressly provides otherwise, if after executing a directive, the  
255 declarant marries, such marriage shall revoke the designation of a person other than the  
256 declarant's spouse as the declarant's mental health care agent, and if, after executing a  
257 directive, the declarant's marriage is dissolved or annulled, such dissolution or annulment  
258 shall revoke the designation of the declarant's former spouse as the declarant's mental  
259 health care agent.

260 (c) A directive which survives disability, incapacity, or incompetency shall not be revoked  
261 solely by the appointment of a guardian or receiver for the declarant. Absent an order of  
262 the probate court or superior court having jurisdiction directing a guardian of the person  
263 to exercise the powers of the declarant under a directive which survives disability,  
264 incapacity, or incompetency, the guardian of the person has no power, duty, or liability  
265 with respect to any mental health care matters covered by the directive; provided, however,  
266 that no order usurping the authority of a mental health care agent known to the proposed  
267 guardian shall be entered unless notice is sent by first-class mail to the mental health care

268 agent's last known address and it is shown by clear and convincing evidence that the mental  
269 health care agent is acting in a manner inconsistent with the directive.

270 37-11-11.

271 (a) Upon being presented with a psychiatric advance directive, a provider or facility shall  
272 make the directive a part of a declarant's medical record.

273 (b) In the absence of specific knowledge of the revocation or invalidity of a directive, a  
274 provider or facility providing mental health care to a declarant may presume that a person  
275 who executed a psychiatric advance directive in accordance with this chapter was of sound  
276 mind and acted voluntarily when executing such directive and may rely upon a psychiatric  
277 advance directive or a copy of that directive.

278 (c) A provider or facility shall be authorized to act in accordance with a directive when a  
279 declarant is incapable of making mental health care decisions.

280 (d) A provider or facility shall continue to obtain a declarant's consent to all mental health  
281 care decisions if he or she is capable of providing consent or refusal.

282 37-11-12.

283 (a)(1) When acting under the authority of a directive, a provider or facility shall comply  
284 with it to the fullest extent possible unless the requested mental health care is:

285 (A) Unavailable;

286 (B) Medically contraindicated in a manner that would result in substantial harm to the  
287 declarant if administered; or

288 (C) In the opinion of the provider or facility, inconsistent with reasonable medical  
289 standards to benefit the declarant or has proven ineffective in treating such declarant's  
290 mental health condition.

291 (2) In the event that a part of a directive is unable to be followed due to any of the  
292 circumstances set forth in paragraph (1) of this subsection, all other parts of such  
293 directive shall be followed.

294 (b) If a provider or facility is unwilling at any time for one or more of the reasons set forth  
295 in paragraph (1) of subsection (a) of this Code section to comply with a declarant's wishes  
296 as set forth in the directive or with the decision of such declarant's agent, such provider or  
297 facility shall:

298 (1) Document the reason for not following the directive in such declarant's medical  
299 record; and

300 (2) Promptly notify such declarant and his or her agent, if one is appointed in the  
301 directive, or otherwise such declarant's legal guardian, of the refusal to follow the  
302 directive or instructions of the agent and document the notification in such declarant's  
303 medical record.

304 (c) In the event a provider or facility is unwilling at any time for one or more of the  
305 reasons set forth in paragraph (1) of subsection (a) of this Code section to comply with a  
306 declarant's wishes as set forth in the directive or with the decision of such declarant's agent,  
307 if an agent has been appointed, then the declarant's agent, or otherwise such declarant's  
308 legal guardian, shall arrange for such declarant's transfer to another provider or facility if  
309 the requested care would be delivered by that other provider or facility.

310 (d) A provider or facility unwilling at any time for one or more of the reasons set forth in  
311 paragraph (1) of subsection (a) of this Code section to comply with a declarant's wishes as  
312 set forth in the directive or with the decision of a declarant's mental health care agent shall  
313 continue to provide reasonably necessary consultation and care in connection with the  
314 pending transfer.

315 (e) A psychiatric advance directive shall not limit the involuntary examination, treatment,  
316 or hospitalization of patients pursuant to Chapter 3 or Chapter 7 of this title or evaluations

317 or treatment services rendered pursuant to a court order under Code Section 17-7-130,  
318 17-7-130.1, or 17-7-131.

319 (f) Nothing in this chapter shall be construed to require a provider or facility to provide  
320 mental health care for which a declarant or a third-party payor is unable or refuses to  
321 ensure payment.

322 37-11-13.

323 (a) Each provider, facility, or any other person who acts in good faith reliance on any  
324 instructions contained in a directive or on any direction or decision by a mental health care  
325 agent shall be protected and released to the same extent as though such person had  
326 interacted directly with a capable declarant.

327 (b) Without limiting the generality of the provisions of subsection (a) of this Code section,  
328 the following specific provisions shall also govern, protect, and validate the acts of a  
329 mental health care agent and each such provider, facility, and any other person acting in  
330 good faith reliance on such instruction, direction, or decision:

331 (1) No provider, facility, or person shall be subject to civil or criminal liability or  
332 discipline for unprofessional conduct solely for complying with any instructions  
333 contained in a directive or with any direction or decision by a mental health care agent,  
334 even if death or injury to the declarant ensues;

335 (2) No provider, facility, or person shall be subject to civil or criminal liability or  
336 discipline for unprofessional conduct solely for failure to comply with any instructions  
337 contained in a directive or with any direction or decision by a mental health care agent,  
338 so long as such provider, facility, or person promptly informs such agent of such  
339 provider's, facility's, or person's refusal or failure to comply with the directive or with any  
340 direction or decision by the mental health care agent. The mental health care agent shall  
341 then be responsible for arranging the declarant's transfer to another provider. A provider  
342 who is unwilling to comply with the mental health care agent's decision or the directive

343 shall continue to provide reasonably necessary consultation and care in connection with  
344 the pending transfer;

345 (3) If the actions of a provider, facility, or person who fails to comply with any  
346 instruction contained in a directive or with any direction or decision by a mental health  
347 care agent are substantially in accord with reasonable medical standards at the time of  
348 consent or refusal of mental health care and such provider, facility, or person cooperates  
349 in the transfer of the declarant pursuant to subsection (d) of Code Section 37-11-12, such  
350 provider, facility, or person shall not be subject to civil or criminal liability or discipline  
351 for unprofessional conduct for failure to comply with the psychiatric advance directive;

352 (4) No mental health care agent who, in good faith, acts with due care for the benefit of  
353 the declarant and in accordance with the terms of a directive, or who fails to act, shall be  
354 subject to civil or criminal liability for such action or inaction;

355 (5) If the authority granted by a psychiatric advance directive is revoked under  
356 Code Section 37-11-10, a provider, facility, or agent shall not be subject to criminal  
357 prosecution or civil liability for acting in good faith reliance upon such psychiatric  
358 advance directive unless such provider, facility, or agent had actual knowledge of the  
359 revocation; and

360 (6) In the event a declarant has appointed a health care agent in accordance with Chapter  
361 32 of Title 31, no provider, facility, or person who relies in good faith on the direction of  
362 such health care agent shall be subject to civil or criminal liability or discipline for  
363 unprofessional conduct for complying with any direction or decision of such health care  
364 agent in the event the declarant's condition is subsequently determined to be a mental  
365 health care condition.

366 37-11-14.

367 A law enforcement officer who uses a declarant's valid psychiatric advance directive and  
368 acts in good faith reliance on the instructions contained in such directive shall not be

369 subject to criminal prosecution or civil liability for any harm to such declarant that results  
 370 from a good faith effort to follow such directive's instructions.

371 37-11-15.

372 (a) The provisions of this chapter shall not apply to or invalidate a valid psychiatric  
 373 advance directive executed prior to July 1, 2022.

374 (b) The use of the form set forth in Code Section 37-11-16 or a similar form after July 1,  
 375 2022, in the creation of a psychiatric advance directive shall be deemed lawful and, when  
 376 such form is used and it meets the requirements of this chapter, it shall be construed in  
 377 accordance with the provisions of this chapter.

378 (c) Any person may use another form for a psychiatric advance directive so long as the  
 379 form is substantially similar to, otherwise complies with the provisions of this chapter, and  
 380 provides notice to a declarant substantially similar to that contained in the form set forth  
 381 in Code Section 37-11-16. As used in this subsection, the term 'substantially similar' may  
 382 include forms from other states.

383 37-11-16.

384 **'GEORGIA PSYCHIATRIC ADVANCE DIRECTIVE**

385 By: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
 386 (Print Name) (Month/Day/Year)

387 *As used in this psychiatric advance directive, the term:*

388 *(1) "Facility" means a hospital, skilled nursing facility, hospice, institution, home,*  
 389 *residential or nursing facility, treatment facility, and any other facility or service which*  
 390 *has a valid permit or provisional permit issued under Chapter 7 of Title 31 of the Official*  
 391 *Code of Georgia Annotated or which is licensed, accredited, or approved under the laws*



392 of any state, and includes hospitals operated by the United States government or by any  
393 state or subdivision thereof.

394 (2) "Provider" means any person administering mental health care who is licensed,  
395 certified, or otherwise authorized or permitted by law to administer mental health care  
396 in the ordinary course of business or the practice of a profession, including, but not  
397 limited to, professional counselors, psychologists, clinical social workers, marriage and  
398 family therapists, and clinical nurse specialists in psychiatric and mental health; a  
399 physician; or any person acting for any such authorized person.

400 This psychiatric advance directive has four parts:

401 PART ONE STATEMENT OF INTENT AND TREATMENT PREFERENCES.

402 This part allows you to state your intention for this document and state  
403 your mental health treatment preferences and consent if you have been  
404 determined to be incapable of making informed decisions about your  
405 mental health care. PART ONE will become effective only if you have  
406 been determined in the opinion of a physician or licensed psychologist  
407 who has personally examined you, or in the opinion of a court, to lack  
408 the capacity to understand the risks and benefits of, and the  
409 alternatives to, a mental health care decision under consideration and  
410 you are unable to give or communicate rational reasons for mental  
411 health care decisions because of impaired thinking, impaired ability  
412 to receive and evaluate information, or other cognitive disability.  
413 Reasonable and appropriate efforts will be made to communicate with  
414 you about your mental health treatment preferences before PART ONE  
415 becomes effective. You should talk to your family and others close to  
416 you about your intentions and mental health treatment preferences.

417 PART TWO MENTAL HEALTH CARE AGENT. This part allows you to choose  
418 someone to make mental health care decisions for you when you  
419 cannot make mental health care decisions for yourself. The person you  
420 choose is called a mental health care agent. You should talk to your  
421 mental health care agent about this important role.

422 PART THREE OTHER RELATED ISSUES. This part allows you to give important  
423 information to people who may be involved with you during a mental  
424 health care crisis.

425 PART FOUR EFFECTIVENESS AND SIGNATURES. This part requires your  
426 signature and the signatures of two witnesses. You must complete  
427 PART FOUR if you have filled out any other part of this form.

428 You may fill out any or all of the first three parts listed above. You must fill out PART  
429 FOUR of this form in order for this form to be effective.

430 You should give a copy of this completed form to people who might need it, such as your  
431 mental health care agent, your family, and your physician. Keep a copy of this completed  
432 form at home in a place where it can easily be found if it is needed. Review this completed  
433 form periodically to make sure it still reflects your preferences. If your preferences  
434 change, complete a new psychiatric advance directive.

435 Using this form of psychiatric advance directive is completely optional. Other forms of  
436 psychiatric advance directives may be used in Georgia.

437 You may revoke this completed form at any time that you are capable of making informed  
438 decisions about your mental health care. If you choose to revoke this form, you should  
439 communicate your revocation to your providers, your agents, and any other person to  
440 whom you have given a copy of this form. This completed form will supersede any advance  
441 directive for health care, durable power of attorney for health care, health care proxy, or  
442 living will that you have completed before completing this form to the extent that such other  
443 documents relate to mental health care and are inconsistent with the information contained  
444 in this form.

445 PART ONE: STATEMENT OF INTENT  
446 AND TREATMENT PREFERENCES

447 [PART ONE will become effective only if you have been determined in the opinion of a  
448 physician or licensed psychologist who has personally examined you, or in the opinion of  
449 a court, to lack the capacity to understand the risks and benefits of, and the alternatives to,  
450 a mental health care decision under consideration and you are unable to give or  
451 communicate rational reasons for mental health care decisions because of impaired  
452 thinking, impaired ability to receive and evaluate information, or other cognitive disability.  
453 Reasonable and appropriate efforts will be made to communicate with you about your  
454 mental health treatment preferences before PART ONE becomes effective. PART ONE will  
455 be effective even if PARTS TWO or THREE are not completed. If you have not selected a  
456 mental health care agent in PART TWO, or if your mental health care agent is not  
457 available, then PART ONE will communicate your treatment preferences to your providers  
458 or a facility providing care to you. If you have selected a mental health care agent in  
459 PART TWO, then your mental health care agent will have the authority to make health care  
460 decisions for you regarding matters guided by your mental health treatment preferences  
461 and other factors described in this PART.]

462 **(1) STATEMENT OF INTENT**

463 I, (*your name*) \_\_\_\_\_, being of sound mind, willfully and  
464 voluntarily make this psychiatric advance directive as a means of expressing in advance  
465 my informed choices and consent regarding my mental health care in the event I become  
466 incapable of making informed decisions on my own behalf. I understand this document  
467 becomes effective if it is determined by a physician or licensed psychologist who has  
468 personally examined me, or in the opinion of a court, that I lack the capacity to  
469 understand the risks, benefits, and alternatives to a mental health care treatment decision  
470 under consideration and I am unable to give or communicate rational reasons for my  
471 mental health care treatment decisions because of impaired thinking, impaired ability to  
472 receive and evaluate information, or other cognitive disability.

473 If I am deemed incapable of making mental health care decisions, I intend for this  
474 document to constitute my advance authorization and consent, based on my past  
475 experiences with my illness and knowledge gained from those experiences, for treatment  
476 that is medically indicated and consistent with the preferences I have expressed in this  
477 document.

478 I understand this document continues in operation only during my incapacity to make  
479 mental health care decisions. I understand I may revoke this document only during  
480 periods when I am mentally capable.

481 I intend for this psychiatric advance directive to take precedence over any advance  
482 directive for health care executed pursuant to Chapter 32 of Title 31 of the Official Code  
483 of Georgia Annotated, durable power of attorney for health care creating a health care  
484 agency under the former Chapter 36 of Title 31 of the Official Code of Georgia  
485 Annotated, as such chapter existed on and before June 30, 2007, health care proxy, or

486 living will that I have executed prior to executing this form to the extent that such other  
487 documents relate to mental health care and are inconsistent with this executed document.

488 In the event that a decision maker is appointed by a court to make mental health care  
489 decisions for me, I intend this document to take precedence over all other means of  
490 determining my intent while I was competent.

491 It is my intent that a person or facility involved in my care shall not be civilly liable or  
492 criminally prosecuted for honoring my wishes as expressed in this document or for  
493 following the directions of my agent.

494 **(2) INFORMATION REGARDING MY SYMPTOMS**

495 The following are symptoms or behaviors I typically exhibit when escalating toward a  
496 mental health crisis. If I exhibit any of these symptoms or behaviors, an evaluation may  
497 be needed regarding whether I am incapable of making mental health care decisions:

498 \_\_\_\_\_  
499 \_\_\_\_\_  
500 \_\_\_\_\_

501 The following may cause me to experience a mental health crisis or to make my  
502 symptoms worse:

503 \_\_\_\_\_  
504 \_\_\_\_\_  
505 \_\_\_\_\_

506 The following techniques may be helpful in de-escalating my crisis:

507 \_\_\_\_\_  
508 \_\_\_\_\_  
509 \_\_\_\_\_

510 When I exhibit the following behaviors, I would like to be evaluated to determine  
511 whether I have regained the capacity to make my mental health care decisions:

512 \_\_\_\_\_  
513 \_\_\_\_\_  
514 \_\_\_\_\_

515 **(3) PREFERRED CLINICIANS**

516 The names of my doctors, therapists, pharmacists, and other mental health care  
517 professionals and their telephone numbers are:

518 Name and telephone numbers:

519 \_\_\_\_\_  
520 \_\_\_\_\_  
521 \_\_\_\_\_

522 I prefer and consent to treatment from the following clinicians:

523 Names:

524 \_\_\_\_\_  
525 \_\_\_\_\_  
526 \_\_\_\_\_

527 I refuse to be treated by the following clinicians:

528 Names:

529 \_\_\_\_\_  
530 \_\_\_\_\_  
531 \_\_\_\_\_

532 **(4) TREATMENT INSTRUCTIONS**

533 **Medications**

534 I am currently using and consent to continue to use the following medications (include  
535 all medications, whether for mental health care treatment or general health care  
536 treatment):

537 \_\_\_\_\_  
538 \_\_\_\_\_  
539 \_\_\_\_\_

540 If additional medications become necessary, I prefer and consent to take the following  
541 medications:

542 \_\_\_\_\_  
543 \_\_\_\_\_  
544 \_\_\_\_\_

545 I cannot tolerate the following medications because:

546 \_\_\_\_\_  
547 \_\_\_\_\_  
548 \_\_\_\_\_

549 I am allergic to the following medications:

550 \_\_\_\_\_  
551 \_\_\_\_\_  
552 \_\_\_\_\_

553 If my preferred medications cannot be given and I have not appointed an agent in PART  
554 TWO to make an alternative decision for me, I want my treating physician to choose an  
555 alternative medication that would best meet my mental health needs, subject to any  
556 limitations I have expressed in my treating instructions above. (Check "yes" if you agree  
557 with this statement and "no" if you disagree with this statement.) Yes No

558 In the event I need to have medication administered, I would prefer and consent to the  
559 following methods (Check "yes" or "no" and list a reason for your request if you have  
560 one.):

561 Medication in pill form: \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_

562 Reason: \_\_\_\_\_

563 Liquid medication: \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_

564 Reason: \_\_\_\_\_

565 Medication by injection: \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_

566 Reason: \_\_\_\_\_

567 Covert medication

568 (without my knowledge in drink or food): \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_

569 Reason: \_\_\_\_\_

570 **Hospitalization is Not My First Choice**

571 It is my intention, if possible, to stay at home or in the community with the following  
572 supports:

573 \_\_\_\_\_

574 \_\_\_\_\_

575 \_\_\_\_\_

576 If I need outpatient therapy, I prefer and consent to it being provided by:

577 \_\_\_\_\_

578 \_\_\_\_\_

579 \_\_\_\_\_

580 Additional instructions that may help me avoid a hospitalization:

581 \_\_\_\_\_

582 \_\_\_\_\_

583 \_\_\_\_\_



584 **Treatment Facilities**

585 If it becomes necessary for me to be hospitalized, I would prefer and consent to being  
586 treated at the following facilities:

587 \_\_\_\_\_  
588 \_\_\_\_\_  
589 \_\_\_\_\_

590 I refuse to be treated at the following facilities:

591 \_\_\_\_\_  
592 \_\_\_\_\_  
593 \_\_\_\_\_

594 Reason(s) for wishing to avoid the above facilities:

595 \_\_\_\_\_  
596 \_\_\_\_\_  
597 \_\_\_\_\_

598 I generally react to being hospitalized as follows:

599 \_\_\_\_\_  
600 \_\_\_\_\_  
601 \_\_\_\_\_

602 Staff at a facility can help me by doing the following:

603 \_\_\_\_\_  
604 \_\_\_\_\_  
605 \_\_\_\_\_

606 I give permission for the following people to visit me:

607 \_\_\_\_\_  
608 \_\_\_\_\_  
609 \_\_\_\_\_

610 **Additional Interventions** *(Please place your initials in the blanks)*

611 I prefer the following interventions as indicated by my initials and consent to any  
612 intervention where I have initialed next to "yes."

613 Seclusion: \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_

614 Reason: \_\_\_\_\_

615 Physical restraints: \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_

616 Reason: \_\_\_\_\_

617 Experimental treatment: \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_

618 Reason: \_\_\_\_\_

619 Electroconvulsive therapy (ECT): \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_

620 Reason: \_\_\_\_\_

621 Any limitations on consent to the administration of electroconvulsive therapy:

622 \_\_\_\_\_

623 \_\_\_\_\_

624 \_\_\_\_\_

625 Other instructions as to my preferred interventions:

626 \_\_\_\_\_

627 \_\_\_\_\_

628 \_\_\_\_\_

629 **(5) ADDITIONAL STATEMENTS**

630 *[This section is optional. This PART will be effective even if this section is left blank.*

631 *This section allows you to state additional mental health treatment preferences, to*

632 *provide additional guidance to your mental health care agent (if you have selected a*

633 *mental health care agent in PART TWO), or to provide information about your personal*

634 *and religious values about your mental health care and treatment. Understanding that*

635 *you cannot foresee everything that could happen to you, you may want to provide*

636 guidance to your mental health care agent (if you have selected a mental health care  
637 agent in PART TWO) about following your mental health treatment preferences.]

638 \_\_\_\_\_  
639 \_\_\_\_\_  
640 \_\_\_\_\_

641 **PART TWO: MENTAL HEALTH CARE AGENT**

642 [PART ONE will be effective even if PART TWO is not completed. If you do not wish to  
643 appoint an agent, do not complete PART TWO. A provider who is directly involved in  
644 your health care or any employee of that provider may not serve as your mental health  
645 care agent unless such employee is your family member, friend, or associate and is not  
646 directly involved in your health care. An employee of the Department of Behavioral  
647 Health and Developmental Disabilities or of a local public mental health agency or of  
648 any organization that contracts with a local public mental health authority may not serve  
649 as your mental health care agent unless such person is your family member, friend, or  
650 associate and is not directly involved in your health care. If you are married, a future  
651 divorce or annulment of your marriage will revoke the selection of your current spouse  
652 as your mental health care agent unless you indicate otherwise in Section (10) of this  
653 PART. If you are not married, a future marriage will revoke the selection of your mental  
654 health care agent unless the person you selected as your mental health care agent is your  
655 new spouse.]

656 **(6) MENTAL HEALTH CARE AGENT**

657 I select the following person as my mental health care agent to make mental health care  
658 decisions for me:

659 Name: \_\_\_\_\_

660 Address: \_\_\_\_\_

661 Telephone Numbers: \_\_\_\_\_

662 (Home, Work, and Mobile)

663 Agent's Acceptance: I have read this form, and I certify that I do not, have not, and will  
664 not provide mental health care and treatment for: (your name) \_\_\_\_\_

665 I accept the designation as agent for: (your name) \_\_\_\_\_

666 (Agent's signature and date) \_\_\_\_\_

667 **(7) BACK-UP MENTAL HEALTH CARE AGENT**

668 [This section is optional. PART TWO will be effective even if this section is left blank.]

669 If my mental health care agent cannot be contacted in a reasonable time period and  
670 cannot be located with reasonable efforts or for any reason my mental health care agent  
671 is unavailable or unable or unwilling to act as my mental health care agent, then I select  
672 the following, each to act successively in the order named, as my back-up mental health  
673 care agent(s):

674 Name: \_\_\_\_\_

675 Address: \_\_\_\_\_

676 Telephone Numbers: \_\_\_\_\_

677 (Home, Work, and Mobile)

678 Back-up Agent's Acceptance: I have read this form, and I certify that I do not, have  
679 not, and will not provide mental health care and treatment for: (your name)

680 \_\_\_\_\_

681 I accept the designation as agent for: (your name) \_\_\_\_\_

682 (Back-up agent's signature and date) \_\_\_\_\_

683 Name: \_\_\_\_\_

684 Address: \_\_\_\_\_  
 685 Telephone Numbers: \_\_\_\_\_  
 686 (Home, Work, and Mobile)

687 Back-up Agent's Acceptance: I have read this form, and I certify that I do not, have  
 688 not, and will not provide mental health care and treatment for: (your name)  
 689 \_\_\_\_\_

690 I accept the designation as agent for: (your name) \_\_\_\_\_  
 691 (Back-up agent's signature and date) \_\_\_\_\_

692 **(8) GENERAL POWERS OF MENTAL HEALTH CARE AGENT**

693 My mental health care agent will make mental health care decisions for me when I have  
 694 been determined in the opinion of a physician or licensed psychologist who has  
 695 personally examined me, or in the opinion of a court, to lack the capacity to understand  
 696 the risks and benefits of, and the alternatives to, a mental health care treatment decision  
 697 under consideration and I am unable to give or communicate rational reasons for my  
 698 mental health care decisions because of impaired thinking, impaired ability to receive and  
 699 evaluate information, or other cognitive disability.

700 My mental health care agent will have the same authority to make any mental health care  
 701 decision that I could make. My mental health care agent's authority includes, for  
 702 example, the power to:

- 703 •Request and consent to admission or discharge from any facility;
- 704 •Request, consent to, authorize, or withdraw consent to any type of provider or mental
- 705 health care that is consistent with my instructions in PART ONE of this form and
- 706 subject to the limitations set forth in Section (4) of PART ONE; and

707 •Contract for any health care facility or service for me, and to obligate me to pay for  
708 these services (and my mental health care agent will not be financially liable for any  
709 services or care contracted for me or on my behalf).

710 My mental health care agent will be my personal representative for all purposes of federal  
711 or state law related to privacy of medical records (including the Health Insurance  
712 Portability and Accountability Act of 1996) and will have the same access to my medical  
713 records that I have and can disclose the contents of my medical records to others for my  
714 ongoing mental health care.

715 My mental health care agent may accompany me in an ambulance or air ambulance if in  
716 the opinion of the ambulance personnel protocol permits a passenger, and my mental  
717 health care agent may visit or consult with me in person while I am in a facility if its  
718 protocol permits visitation.

719 My mental health care agent may present a copy of this psychiatric advance directive in  
720 lieu of the original, and the copy will have the same meaning and effect as the original.

721 I understand that under Georgia law:

722 •My mental health care agent may refuse to act as my mental health care agent; and  
723 •A court can take away the powers of my mental health care agent if it finds that my  
724 mental health care agent is not acting in accordance with this directive.

725 **(9) GUIDANCE FOR MENTAL HEALTH CARE AGENT**

726 In the event my directive is being used, my agent should first look at my instructions as  
727 expressed in PART ONE. If a situation occurs for which I have not expressed a  
728 preference, or in the event my preference is not available, my mental health care agent

729 should think about what action would be consistent with past conversations we have had,  
 730 my treatment preferences as expressed in PART ONE, my religious and other beliefs and  
 731 values, and how I have handled medical and other important issues in the past. If what  
 732 I would decide is still unclear, then my mental health care agent should make decisions  
 733 for me that my mental health care agent believes are in my best interests, considering the  
 734 benefits, burdens, and risks of my current circumstances and treatment options.

735 I impose the following limitations on my agent's authority to act on my behalf:

736 \_\_\_\_\_  
 737 \_\_\_\_\_  
 738 \_\_\_\_\_

739 **(10) WHEN SPOUSE IS MENTAL HEALTH CARE AGENT AND THERE HAS**  
 740 **BEEN A DIVORCE OR ANNULMENT OF OUR MARRIAGE**

741 *[Initial if you agree with this statement; leave blank if you do not.]*

742 \_\_\_\_\_ I desire the person I have named as my agent, who is now my spouse, to  
 743 remain as my agent even if we become divorced or our marriage is annulled.

<p>744 <b><u>PART THREE: OTHER RELATED ISSUES</u></b></p>
---

745 *[PART THREE is optional. This psychiatric advance directive will be effective even if*  
 746 *PART THREE is left blank.]*

747 **(11) GUIDANCE FOR LAW ENFORCEMENT**

748 I typically react to law enforcement in the following ways:

749 \_\_\_\_\_  
 750 \_\_\_\_\_  
 751 \_\_\_\_\_

752 The following person(s) may be helpful in the event of law enforcement involvement:

753 Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

754 Relationship: \_\_\_\_\_

755 Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

756 Relationship: \_\_\_\_\_

757 **(12) HELP FROM OTHERS**

758 The following people are part of my support system (child care, pet care, getting my mail,  
 759 paying my bills, etc.) and should be contacted in the event of a crisis:

760 Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

761 Responsibility: \_\_\_\_\_

762 Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

763 Responsibility: \_\_\_\_\_

764 Name: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

765 Responsibility: \_\_\_\_\_

766 

<b><u>PART FOUR: EFFECTIVENESS AND SIGNATURES</u></b>
---

767 This psychiatric advance directive will become effective only if I have been determined  
 768 in the opinion of a physician or licensed psychologist who has personally examined me,  
 769 or in the opinion of a court, to lack the capacity to understand the risks and benefits of,  
 770 and the alternatives to, a mental health care decision under consideration and I am unable  
 771 to give or communicate rational reasons for my mental health care decisions because of



772 impaired thinking, impaired ability to receive and evaluate information, or other cognitive  
 773 disability.

774 This form revokes any psychiatric advance directive that I have executed before this date.  
 775 To the extent this form is in conflict or is inconsistent with any advance directive for  
 776 health care, durable power of attorney for health care, health care proxy, or living will  
 777 executed by me at any time, this form shall control with respect to my mental health care.

778 Unless I have initialed below and have provided alternative future dates or events, this  
 779 psychiatric advance directive will become effective at the time I sign it and will remain  
 780 effective until my death.

781 \_\_\_\_\_ (Initials) This psychiatric advance directive will become effective on or  
 782 upon (date) \_\_\_\_\_ and will terminate on or upon (date) \_\_\_\_\_.

783 *[You must sign and date or acknowledge signing and dating this form in the presence of*  
 784 *two witnesses.*

785 *Both witnesses must be of sound mind and must be at least 18 years of age, but the*  
 786 *witnesses do not have to be together or present with you when you sign this form.*

787 *A witness:*

788 *•Cannot be a person who was selected to be your mental health care agent or back-up*  
 789 *mental health care agent in PART TWO;*

790 *•Cannot be a provider who is providing mental health care to you at the time you*  
 791 *execute this directive or an employee of such provider unless the witness is your family*  
 792 *member, friend, or associate and is not directly involved in your mental health care;*  
 793 *and*

794 •Cannot be an employee of the Department of Behavioral Health and Developmental  
 795 Disabilities or of a local public mental health agency or of any organization that  
 796 contracts with a local public mental health authority unless the witness is your family  
 797 member, friend, or associate and is not directly involved in your mental health care.]

798 By signing below, I state that I am of sound mind and capable of making this psychiatric  
 799 advance directive and that I understand its purpose and effect.

800 \_\_\_\_\_  
 801 (Signature of Declarant) (Date)

802 The declarant signed this form in my presence or acknowledged signing this form to me.  
 803 Based upon my personal observation, the declarant appeared to be of sound mind and  
 804 mentally capable of making this psychiatric advance directive and signed this form  
 805 willingly and voluntarily.

806 \_\_\_\_\_  
 807 (Signature of First Witness) (Date)

808 Print Name: \_\_\_\_\_

809 Address: \_\_\_\_\_

810 \_\_\_\_\_  
 811 (Signature of Second Witness) (Date)

812 Print Name: \_\_\_\_\_

813 Address: \_\_\_\_\_

814 [This form does not need to be notarized.]"

815

## PART II

816

## SECTION 2-1.

817 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is  
818 amended by revising Code Section 10-6B-3, relating to applicability of the 'Georgia Power  
819 of Attorney Act,' as follows:

820 "10-6B-3.

821 This chapter shall apply to all powers of attorney except:

822 (1) A power to the extent it is coupled with an interest in the subject of the power,  
823 including a power given to or for the benefit of a creditor in connection with a credit  
824 transaction;

825 (2) A power to make health care decisions, including but limited to, mental health care  
826 decisions;

827 (3) Any delegation of voting, management, or similar rights related to the governance  
828 or administration of an entity or business, including, but not limited to, delegation of  
829 voting or management rights;

830 (4) A power created on a form prescribed by a government or governmental subdivision,  
831 agency, or instrumentality for a governmental purpose;

832 (5) A power created by a person other than an individual;

833 (6) A power that grants authority with respect to a single transaction or series of related  
834 transactions involving real estate;

835 (7) A power given to a transfer agent to facilitate a specific transfer or disposition of one  
836 or more identified stocks, bonds, or other financial instruments;

837 (8) A power authorizing a financial institution or broker-dealer, or an employee of the  
838 financial institution or broker-dealer, to act as agent for the account owner in executing  
839 trades or transfers of cash, securities, commodities, or other financial assets in the regular  
840 course of business;

- 841 (9) Powers of attorney provided for under Titles 19 and 33; and  
842 (10) As set forth in Code Section 10-6B-81."

843 **SECTION 2-2.**

844 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
845 amended in Code Section 16-5-5, relating to assisted suicide and notification of licensing  
846 board regarding violation, by revising paragraphs (3) and (4) of subsection (c) as follows:

847 "(3) Any person prescribing, dispensing, or administering medications or medical  
848 procedures pursuant to, without limitation, a living will, a durable power of attorney for  
849 health care, an advance directive for health care, a psychiatric advance directive, a  
850 Physician Orders for Life-Sustaining Treatment form pursuant to Code Section 31-1-14,  
851 or a consent pursuant to Code Section 29-4-18 or 31-9-2 when such actions are calculated  
852 or intended to relieve or prevent a patient's pain or discomfort but are not calculated or  
853 intended to cause such patient's death, even if the medication or medical procedure may  
854 have the effect of hastening or increasing the risk of death;

855 (4) Any person discontinuing, withholding, or withdrawing medications, medical  
856 procedures, nourishment, or hydration pursuant to, without limitation, a living will, a  
857 durable power of attorney for health care, an advance directive for health care, a  
858 psychiatric advance directive, a Physician Orders for Life-Sustaining Treatment form  
859 pursuant to Code Section 31-1-14, a consent pursuant to Code Section 29-4-18 or 31-9-2,  
860 or a written order not to resuscitate; or"

861 **SECTION 2-3.**

862 Said title is further amended in Code Section 16-5-101, relating to neglect to a disabled adult,  
863 elder person, or resident, by revising subsection (b) as follows:

864 "(b) The provisions of this Code section shall not apply to a physician nor any person  
865 acting under a physician's direction nor to a hospital, hospice, or long-term care facility,

866 nor any agent or employee thereof who is in good faith acting within the scope of his or her  
867 employment or agency or who is acting in good faith in accordance with a living will, a  
868 durable power of attorney for health care, an advance directive for health care, a psychiatric  
869 advance directive, a Physician Orders for Life-Sustaining Treatment form pursuant to Code  
870 Section 31-1-14, an order not to resuscitate, or the instructions of the patient or the patient's  
871 lawful surrogate decision maker, nor shall the provisions of this Code section require any  
872 physician, any institution licensed in accordance with Chapter 7 of Title 31, or any  
873 employee or agent thereof to provide essential services or shelter to any person in the  
874 absence of another legal obligation to do so."

875 **SECTION 2-4.**

876 Said title is further amended in Code Section 16-5-102.1, relating to trafficking of a disabled  
877 adult, elder person, or resident, by revising subsection (f) as follows:

878 "(f) This Code section shall not apply to a physician nor any person acting under a  
879 physician's direction nor to a hospital, hospice, or long-term care facility, nor any agent or  
880 employee thereof who is in good faith acting within the scope of his or her employment or  
881 agency or who is acting in good faith in accordance with a living will, a durable power of  
882 attorney for health care, an advance directive for health care, a psychiatric advance  
883 directive, a Physician Orders for Life-Sustaining Treatment form pursuant to Code Section  
884 31-1-14, an order not to resuscitate, or the instructions of the patient or the patient's lawful  
885 surrogate decision maker."

886 **SECTION 2-5.**

887 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is  
888 amended in Code Section 19-8-23, relating to where records of adoption are kept,  
889 examination by parties and attorneys, and use of information by agency and department, by  
890 revising paragraph (1) of subsection (d) as follows:

891 "(d)(1) Upon the request of a party at interest in the adoption, a child, legal guardian, ~~or~~  
892 health care agent, or mental health care agent of an adopted individual or a provider of  
893 medical services to such a party, child, legal guardian, ~~or~~ health care agent, or mental  
894 health care agent when certain information would assist in the provision of medical care,  
895 a medical emergency, or medical diagnosis or treatment, the department or child-placing  
896 agency shall access its own records on finalized adoptions for the purpose of adding  
897 subsequently obtained medical information or releasing nonidentifying medical and  
898 health history information contained in its records pertaining to an adopted individual or  
899 the biological parents or relatives of the biological parents of the adopted individual. For  
900 purposes of this paragraph, the term 'health care agent' shall have the meaning provided  
901 by Code Section 31-32-2 and the term 'mental health care agent' shall have the meaning  
902 provided by Code Section 37-11-3."

903 **SECTION 2-6.**

904 Title 29 of the Official Code of Georgia Annotated, relating to guardian and ward, is  
905 amended in Code Section 29-4-10, relating to petition for appointment of guardian and  
906 requirements for petition, by revising paragraph (6) of subsection (b) as follows:

907 "(6) Whether, to the petitioner's knowledge, there exists any living will, durable power  
908 of attorney for health care, advance directive for health care, psychiatric advance  
909 directive, order relating to cardiopulmonary resuscitation, or other instrument that deals  
910 with the management of the person of the proposed ward in the event of incapacity and  
911 the name and address of any fiduciary or agent named in the instrument;"

912 **SECTION 2-7.**

913 Said title is further amended in Code Section 29-4-21, relating to rights and privileges  
914 removed from ward upon appointment of guardian, by revising subsection (b) as follows:

915 "(b) The mere appointment of a guardian does not revoke the powers of an agent who was  
 916 previously appointed by the ward to act as an agent under a durable power of attorney for  
 917 health care, a or health care agent under an advance directive for health care, or a mental  
 918 health care agent under a psychiatric advance directive."

919 **SECTION 2-8.**

920 Said title is further amended in Code Section 29-5-21, relating to rights and powers removed  
 921 from ward upon appointment of conservator, by revising subsection (b) as follows:

922 "(b) The mere appointment of a conservator does not revoke the powers of an agent who  
 923 was previously appointed by the ward to act as the ward's agent under a durable power of  
 924 attorney for health care, or health care agent under an advance directive for health care, or  
 925 mental health care agent under a psychiatric advance directive."

926 **SECTION 2-9.**

927 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in Code  
 928 Section 31-8-55, relating to entry and investigative authority, cooperation of government  
 929 agencies, and communication with residents, by revising subsection (b) as follows:

930 "(b) The state ombudsman or community ombudsman shall have the authority to enter any  
 931 long-term care facility and shall use his or her best efforts to enter such facility during  
 932 normal visiting hours. Upon entering the long-term care facility, the ombudsman shall  
 933 notify the administrator or, in the absence of the administrator, the person in charge of the  
 934 facility, before speaking to any residents. After notifying the administrator or the person  
 935 in charge of the facility, the ombudsman may communicate privately and confidentially  
 936 with residents of the facility, individually or in groups. The ombudsman shall have access  
 937 to the medical and social records of any resident if:

938 (1) The ombudsman has the permission of the resident or the legal representative or  
 939 guardian of the resident;

940 (2) The resident is unable to consent to the review and has no legal representative or  
 941 guardian; or

942 (3) There is a guardian of the person of the resident and that guardian refuses to permit  
 943 access to the records necessary to investigate a complaint, and:

944 (A) There is reasonable cause to believe that the guardian is not acting in the best  
 945 interests of the resident; and

946 (B) A community ombudsman obtains the approval of the state ombudsman.

947 As used in this Code section, the term 'legal representative' means an agent under a valid  
 948 power of attorney, provided that the agent is acting within the scope of his or her agency;  
 949 an agent under a durable power of attorney for health care or health care agent under an  
 950 advance directive for health care; a mental health care agent under a psychiatric advance  
 951 directive; or an executor, executrix, administrator, or administratrix of the estate of a  
 952 deceased resident. The ombudsman shall have the authority to inspect the physical plant  
 953 and have access to the administrative records, policies, and documents of the facility to  
 954 which the residents have or the general public has access. Entry and investigation provided  
 955 by this Code section shall be conducted in a manner which will not significantly disrupt the  
 956 provision of nursing or other care to residents."

957 **SECTION 2-10.**

958 Said title is further amended in Code Section 31-9-2, relating to persons authorized to  
 959 consent to surgical or medical treatment, by revising paragraphs (1) and (1.1) of subsection  
 960 (a) as follows:

961 "(1) Any adult, for himself or herself, whether by living will, advance directive for health  
 962 care, psychiatric advance directive under Chapter 11 of Title 37, or otherwise;

963 (1.1) Any person authorized to give such consent for the adult under an advance directive  
 964 for health care or durable power of attorney for health care under Chapter 32 of this title  
 965 or psychiatric advance directive under Chapter 11 of Title 37;"



966 **SECTION 2-11.**

967 Said title is further amended in Code Section 31-32-2, relating to definitions relative to the  
 968 "Georgia Advance Directive for Health Care Act," by adding new paragraphs to read as  
 969 follows:

970 "(10.1) 'Mental health care' shall have the same meaning as in Code Section 37-11-3.

971 (10.2) 'Mental health care agent' means an agent appointed under a psychiatric advance  
 972 directive in accordance with Chapter 11 of Title 37."

973 "(12.1) 'Psychiatric advance directive' means a written document voluntarily executed  
 974 by an individual in accordance with the requirements of Code Section 37-11-9."

975 **SECTION 2-12.**

976 Said title is further amended in Code Section 31-32-4, relating to the advance directive for  
 977 health care form, by revising paragraph (3) of PART ONE of the form as follows:

978 **"(3) GENERAL POWERS OF HEALTH CARE AGENT**

979 My health care agent will make health care decisions for me when I am unable to  
 980 communicate my health care decisions or I choose to have my health care agent  
 981 communicate my health care decisions.

982 My health care agent will have the same authority to make any health care decision that  
 983 I could make. My health care agent's authority includes, for example, the power to:

- 984 • ~~Admit me to or discharge me~~ Request and consent to admission or discharge from any  
 985 hospital, skilled nursing facility, hospice, or other health care facility or service;
- 986 • Request, consent to, withhold, or withdraw any type of health care; and
- 987 • Contract for any health care facility or service for me, and to obligate me to pay for  
 988 these services (and my health care agent will not be financially liable for any services  
 989 or care contracted for me or on my behalf).

990 My health care agent will be my personal representative for all purposes of federal or  
991 state law related to privacy of medical records (including the Health Insurance Portability  
992 and Accountability Act of 1996) and will have the same access to my medical records  
993 that I have and can disclose the contents of my medical records to others for my ongoing  
994 health care.

995 My health care agent may accompany me in an ambulance or air ambulance if in the  
996 opinion of the ambulance personnel protocol permits a passenger, and my health care  
997 agent may visit or consult with me in person while I am in a hospital, skilled nursing  
998 facility, hospice, or other health care facility or service if its protocol permits visitation.

999 My health care agent may present a copy of this advance directive for health care in lieu  
1000 of the original, and the copy will have the same meaning and effect as the original.

1001 I understand that under Georgia law:

- 1002 • My health care agent may refuse to act as my health care agent;
- 1003 • A court can take away the powers of my health care agent if it finds that my health  
1004 care agent is not acting properly; and
- 1005 • My health care agent does not have the power to make health care decisions for me  
1006 regarding ~~psychosurgery, sterilization, or treatment~~ or involuntary hospitalization, or  
1007 involuntary treatment for mental or emotional illness, developmental disability, or  
1008 addictive disease.
- 1009 • My health care agent does not have the power to make health care decisions that are  
1010 otherwise covered under a psychiatric advance directive that I have executed pursuant  
1011 to Chapter 11 of Title 37 of the Official Code of Georgia Annotated, including  
1012 decisions related to treatment or hospitalization for mental or emotional illness,  
1013 developmental disability, or addictive disease."

**SECTION 2-13.**

1014  
1015 Said title is further amended in Code Section 31-32-7, relating to duties and responsibilities  
1016 of health care agents, by revising paragraph (1) of subsection (e) and by adding a new  
1017 subsection to read as follows:

1018     “(1) The health care agent is authorized to consent to and authorize or refuse, or to  
1019     withhold or withdraw consent to, any and all types of medical care, treatment, or  
1020     procedures relating to the physical or mental health of the declarant, including any  
1021     medication program, surgical procedures, life-sustaining procedures, or provision of  
1022     nourishment or hydration for the declarant, but not including ~~psychosurgery~~, sterilization;  
1023     or involuntary hospitalization or involuntary treatment covered by Title 37;”

1024     “(g) With respect to mental health care, the duties and responsibilities of a health care  
1025     agent under this chapter shall be subordinate to the duties and responsibilities of a mental  
1026     health care agent under Chapter 11 of Title 37 and subject to the terms of a psychiatric  
1027     advance directive executed by the declarant before, simultaneously with, or after the  
1028     advance directive for health care under which the health care agent is acting.”

**SECTION 2-14.**

1029  
1030 Said title is further amended in Code Section 31-32-10, relating to immunity from liability  
1031 or disciplinary action, by revising subsection (a) by deleting "and" at the end of paragraph  
1032 (4), by replacing the period with "; and" at the end of paragraph (5), and by adding a new  
1033 paragraph to read as follows:

1034     “(6) In the event a declarant has appointed a mental health care agent, no health care  
1035     provider, health care facility, or person who relies in good faith on the direction of such  
1036     mental health care agent shall be subject to civil or criminal liability or discipline for  
1037     unprofessional conduct for complying with any direction or decision of such mental  
1038     health care agent in the event the declarant's condition is subsequently determined to be  
1039     a non-mental health care related condition.”

**SECTION 2-15.**

1040

1041 Said title is further amended in Code Section 31-32-12, relating to restriction on requiring  
1042 and preparing advance directives for health care, by revising subsection (b) as follows:

1043 ~~"(b) No~~ A health care facility shall only be authorized to prepare or offer to prepare an  
1044 advance directive for health care unless if specifically requested to do so by a person  
1045 desiring to execute an advance directive for health care or, if such health care facility's  
1046 offer is not coercive in nature and such person consents to such offer. For purposes of this  
1047 subsection, the Department of Corrections shall not be deemed to be a health care facility."

**SECTION 2-16.**

1048

1049 Said title is further amended in Code Section 31-32-14, relating to effect of chapter on other  
1050 legal rights and duties, by adding a new subsection to read as follows:

1051 "(g) With respect to mental health care, nothing in this chapter shall supersede the duties  
1052 and responsibilities of a mental health care agent under Chapter 11 of Title 37 or the terms  
1053 of a psychiatric advance directive executed by the declarant before, simultaneously with,  
1054 or after the advance directive for health care under which the health care agent is acting."

**SECTION 2-17.**

1055

1056 Said title is further amended in Code Section 31-33-2, relating to furnishing copy of records  
1057 to patient, provider, or other authorized person, by revising paragraph (2) of subsection (a)  
1058 as follows:

1059 "(2) Upon written request from the patient or a person authorized to have access to the  
1060 patient's record under an advance directive for health care, a psychiatric advance  
1061 directive, or a durable power of attorney for health care for such patient, the provider  
1062 having custody and control of the patient's record shall furnish a complete and current  
1063 copy of that record, in accordance with the provisions of this Code section. If the patient  
1064 is deceased, such request may be made by the following persons:

- 1065 (A) The executor, administrator, or temporary administrator for the decedent's estate  
1066 if such person has been appointed;
- 1067 (B) If an executor, administrator, or temporary administrator for the decedent's estate  
1068 has not been appointed, by the surviving spouse;
- 1069 (C) If there is no surviving spouse, by any surviving child; and
- 1070 (D) If there is no surviving child, by any parent."

1071 **SECTION 2-18.**

1072 Said title is further amended in Code Section 31-36A-3, relating to definitions relative to the  
1073 "Temporary Health Care Placement Decision Maker for an Adult Act," by adding a new  
1074 paragraph to read as follows:

1075 "(1.1) 'Psychiatric advance directive' means a written document voluntarily executed by  
1076 an individual in accordance with the requirements of Code Section 37-11-9."

1077 **SECTION 2-19.**

1078 Said title is further amended in Code Section 31-36A-6, relating to persons authorized to  
1079 consent, expiration of authorization, limitations on authority to consent, effect on other laws,  
1080 and immunity from liability or disciplinary action, by revising paragraph (2) of subsection  
1081 (a) as follows:

1082 "(2) Any person authorized to give such consent for the adult under an advance directive  
1083 for health care, ~~psychiatric advance directive~~, or durable power of attorney for health care  
1084 under Chapter 32 of this title;"

1085 **SECTION 2-20.**

1086 Title 37 of the Official Code of Georgia Annotated, relating to mental health, is amended in  
1087 Code Section 37-1-1, relating to definitions relative to governing and regulation of mental  
1088 health, by adding new paragraphs to read as follows:

1089 "(11.1) 'Mental health care agent' means an agent appointed under a psychiatric advance  
1090 directive in accordance with Chapter 11 of Title 37."

1091 "(16.1) 'Psychiatric advance directive' means a written document voluntarily executed  
1092 by an individual in accordance with the requirements of Code Section 37-11-9."

1093 **SECTION 2-21.**

1094 Said title is further amended in Code Section 37-1-20, relating to obligations of the  
1095 Department of Behavioral Health and Developmental Disabilities, by revising paragraph (18)  
1096 as follows:

1097 "(18) Classify host homes for persons whose services are financially supported, in whole  
1098 or in part, by funds authorized through the department. As used in this Code section, the  
1099 term 'host home' means a private residence in a residential area in which the occupant  
1100 owner or lessee provides housing and provides or arranges for the provision of food, one  
1101 or more personal services, supports, care, or treatment exclusively for one or two persons  
1102 who are not related to the occupant owner or lessee by blood or marriage. A host home  
1103 shall be occupied by the owner or lessee, who shall not be an employee of the same  
1104 community provider ~~which~~ that provides the host home services by contract with the  
1105 department. The department shall approve and enter into agreements with community  
1106 providers which, in turn, shall contract with host homes. The occupant owner or lessee  
1107 shall not be the guardian of any person served, the conservator of the property of such  
1108 person, or of their property nor the health care agent in such person's advance directive  
1109 for health care, or the mental health care agent in such person's psychiatric advance  
1110 directive. The placement determination for each person placed in a host home shall be  
1111 made according to such person's choice as well as the individual needs of such person in  
1112 accordance with the requirements of Code Section 37-3-162, 37-4-122, or 37-7-162, as  
1113 applicable to such person;"

**SECTION 2-22.**

1114  
1115 Said title is further amended in Code Section 37-2-30, relating to definitions relative to the  
1116 Office of Disability Services Ombudsman, by revising paragraph (7) and by adding a new  
1117 paragraph, to read as follows:

1118 "(7) 'Health care agent' means an agent under a durable power of attorney for health care,  
1119 a or health care agent under an advance directive for health care, or a mental health care  
1120 agent under a psychiatric advance directive."

1121 "(9.1) 'Psychiatric advance directive' means a written document voluntarily executed by  
1122 a patient in accordance with the requirements of Code Section 37-11-9."

**SECTION 2-23.**

1123  
1124 Said title is further amended by revising Code Section 37-3-20, relating to admission of  
1125 voluntary patients, consent of parent or guardian to treatment, and giving notice of rights to  
1126 patient at time of admission, as follows:

1127 "37-3-20.

1128 (a) The chief medical officer of any facility may receive for observation and diagnosis any  
1129 patient 12 years of age or older making application therefor, any patient under 18 years of  
1130 age for whom such application is made by his or her parent or guardian, any patient who  
1131 has a psychiatric advance directive and for whom such application is made by his or her  
1132 mental health care agent, and any patient who has been declared legally incompetent and  
1133 for whom such application is made by his or her guardian. If found to show evidence of  
1134 mental illness and to be suitable for treatment, such person may be given care and  
1135 treatment at such facility; and such person may be detained by such facility until  
1136 discharged pursuant to Code Section 37-3-21 or 37-3-22. The parents or guardian of a  
1137 minor child must give written consent to such treatment. An individualized service plan  
1138 shall be developed for such person as soon as possible.

1139 (b) Any individual voluntarily admitted to a facility under this Code section shall be given  
1140 notice of his or her rights under this chapter at the time of ~~his~~ admission."

1141 **SECTION 2-24.**

1142 Said title is further amended by revising Code Section 37-3-147, relating to representatives  
1143 and guardians ad litem, notification provisions, and duration and scope of guardianship ad  
1144 litem, as follows:

1145 "37-3-147.

1146 (a) At the time a person who has mental illness is admitted to any facility under this  
1147 chapter or as soon thereafter as reasonably possible given the person's condition or mental  
1148 state at the time of admission, such facility shall use diligent efforts to secure the names  
1149 and addresses of at least two representatives, which names and addresses shall be entered  
1150 in the person's clinical record.

1151 (b) The patient may designate one representative; the second representative or, in the  
1152 absence of designation of one representative by the patient, both representatives shall be  
1153 selected by the facility. If the facility is to select both representatives, it must make one  
1154 selection from among the following persons in the order of listing: the patient's mental  
1155 health care agent, legal guardian, spouse, adult child, parent, attorney, adult next of kin, or  
1156 adult friend, provided that, in the case of a patient whose representative or representatives  
1157 have been appointed by the court under Code Section 37-3-62, the facility shall not select  
1158 a different representative. The second representative shall also be selected from the above  
1159 list but without regard to the order of listing, provided that the second representative shall  
1160 not be the person who filed the petition to have the patient admitted to the facility.

1161 (c) If the facility is unable to secure at least two representatives after diligent search or if  
1162 the department is the guardian of the patient, that fact shall be entered in the patient's  
1163 clinical record and the facility shall apply to the court in the county of the patient's  
1164 residence for the appointment of a guardian ad litem, which guardian ad litem shall not be



1165 the department. On application of any person or on its own motion, the court may also  
1166 appoint a guardian ad litem for a patient for whom two representatives have been named  
1167 whenever the appointment of a guardian ad litem is deemed necessary for protection of the  
1168 patient's rights. Such guardian ad litem shall also act as representative of the patient and  
1169 shall have the powers granted to representatives by this chapter.

1170 (d) At any time notice is required by this chapter to be given to the patient's  
1171 representatives, such notice shall be served on the representatives designated under this  
1172 Code section. The patient's guardian ad litem, if any, shall likewise be served. Unless  
1173 otherwise provided, notice may be served in person or by first-class mail. When notice is  
1174 served by mail, a record shall be made of the date of mailing and shall be placed in the  
1175 patient's clinical record. Service shall be completed upon mailing.

1176 (e) At any time notice is required by this chapter to be given to the patient, the date on  
1177 which notice is given shall be entered on the patient's clinical record. If the patient is  
1178 unable to comprehend the written notice, a reasonable effort shall be made to explain the  
1179 notice to him or her.

1180 (f) At the time a court enters an order pursuant to this chapter, such order and notice of the  
1181 date of entry of the order shall be served on the patient and his or her representatives as  
1182 provided in subsection (d) of this Code section.

1183 (g) Notice of an involuntary patient's admission to a facility shall be given to his or her  
1184 representatives in writing. If such involuntary admission is to an emergency receiving  
1185 facility, notice shall also be given by that facility to the patient's representatives by  
1186 telephone or in person as soon as possible.

1187 (h) In every instance in which a court shall appoint a guardian ad litem for any person  
1188 pursuant to the terms of this chapter, such guardianship shall be for the limited purpose  
1189 stated in the order of the court and shall expire automatically after 90 days or after a lesser  
1190 time stated in the order. The responsibility of the guardian ad litem shall not extend  
1191 beyond the specific purpose of the appointment."

**SECTION 2-25.**

1192  
1193 Said title is further amended in Code Section 37-3-148, relating to right of patients or  
1194 representatives to petition for writ of habeas corpus and for judicial protection of rights and  
1195 privileges granted by this chapter, by revising subsection (a) as follows:

1196 "(a) At any time and without notice, a person detained by a facility or a mental health care  
1197 agent, legal guardian, relative, or friend on behalf of such person may petition, as provided  
1198 by law, for a writ of habeas corpus to question the cause and legality of detention and to  
1199 request any court of competent jurisdiction on its own initiative to issue a writ for release,  
1200 provided that, in the case of any such petition for the release of a person detained in a  
1201 facility pursuant to a court order under Code Section 17-7-130 or 17-7-131, a copy of the  
1202 petition along with proper certificate of service shall also be served upon the presiding  
1203 judge of the court ordering such detention and the prosecuting attorney for such court,  
1204 which service may be made by certified mail or statutory overnight delivery, return receipt  
1205 requested."

**SECTION 2-26.**

1206  
1207 Said title is further amended by revising Code Section 37-4-107, relating to appointment of  
1208 client representatives and guardians ad litem, notification provisions, and duration and scope  
1209 of guardianship ad litem, as follows:

1210 "37-4-107.

1211 (a) At the time a client is admitted to any facility under this chapter, that facility shall  
1212 make diligent efforts to secure the names and addresses of at least two representatives,  
1213 which names and addresses shall be entered in the client's clinical record.

1214 (b) The client may designate one representative; the second representative or, in the  
1215 absence of designation of one representative by the client, both representatives shall be  
1216 selected by the facility. If the facility is to select both representatives, it must make one  
1217 selection from among the following persons in the order of listing: the client's mental

1218 health care agent, legal guardian, spouse, adult child, parent, attorney, adult next of kin, or  
1219 adult friend. The second representative shall also be selected from the above list but  
1220 without regard to the order of listing, provided that the second representative shall not be  
1221 the person who filed the petition seeking an order for the client to receive services from the  
1222 department.

1223 (c) If the facility is unable to secure at least two representatives after diligent search or if  
1224 the department is the guardian of the client, that fact shall be entered in the client's clinical  
1225 record and the facility shall apply to the court in the county of the client's residence for the  
1226 appointment of a guardian ad litem, which guardian ad litem shall not be the department.  
1227 On application of any person or on its own motion, the court may also appoint a guardian  
1228 ad litem for a client for whom two representatives have been named whenever the  
1229 appointment of a guardian ad litem is deemed necessary for protection of the client's rights.  
1230 Such guardian ad litem shall act as representative of the client on whom notice is to be  
1231 served under this chapter and shall have the powers granted to representatives by this  
1232 chapter.

1233 (d) At any time notice is required by this chapter to be given to the client's representatives,  
1234 such notice shall be served on the representatives designated under this Code section. The  
1235 client's guardian ad litem, if any, shall likewise be served. Unless otherwise provided,  
1236 notice may be served in person or by first-class mail. When notice is served by mail, a  
1237 record shall be made of the date of mailing and shall be placed in the client's clinical  
1238 record. Service shall be completed upon mailing.

1239 (e) At any time notice is required by this chapter to be given to the client, the date on  
1240 which notice is given shall be entered on the client's clinical record. If the client is unable  
1241 to comprehend a written notice, a reasonable effort shall be made to explain the notice to  
1242 him or her.

1243 (f) At the time a court enters an order pursuant to this chapter, such order and notice of the  
1244 date of entry of the order shall be served on the client and his or her representatives as  
1245 provided in subsection (d) of this Code section.

1246 (g) Notice of a client's admission to a facility shall be given to his or her representatives  
1247 in writing.

1248 (h) In every instance in which a court shall appoint a guardian ad litem for any person  
1249 pursuant to the terms of this chapter, such guardianship shall be for the limited purpose  
1250 stated in the order of the court and shall expire automatically after 90 days or after a lesser  
1251 time stated in the order. The responsibility of the guardian ad litem shall not extend  
1252 beyond the specific purpose of the appointment."

1253 **SECTION 2-27.**

1254 Said title is further amended in Code Section 37-4-108, relating to right of clients or  
1255 representatives to petition for writ of habeas corpus and for judicial protection of rights and  
1256 privileges granted by chapter, by revising subsection (a) as follows:

1257 "(a) At any time and without notice, a person detained by a facility or a mental health care  
1258 agent, legal guardian, relative, or friend on behalf of such person may petition as provided  
1259 by law for a writ of habeas corpus to question the cause and legality of detention and to  
1260 request any court of competent jurisdiction on its own initiative to issue a writ for release,  
1261 provided that in the case of any such petition for the release of a person detained in a  
1262 facility pursuant to a court order under Code Section 17-7-130 or 17-7-131, a copy of the  
1263 petition, along with proper certificate of service, shall also be served upon the presiding  
1264 judge of the court ordering such detention and the prosecuting attorney for such court,  
1265 which service may be made by certified mail or statutory overnight delivery, return receipt  
1266 requested."

**SECTION 2-28.**

1267  
1268 Said title is further amended by revising Code Section 37-7-147, relating to appointment of  
1269 patient representatives and guardians ad litem, notice provisions, and duration and scope of  
1270 guardianship ad litem, as follows:

1271 "37-7-147.

1272 (a) At the time a patient is admitted to any facility under this chapter, that facility shall use  
1273 diligent efforts to secure the names and addresses of at least two representatives, which  
1274 names and addresses shall be entered in the patient's clinical record.

1275 (b) The patient may designate one representative; the second representative or, in the  
1276 absence of designation of one representative by the patient, both representatives shall be  
1277 selected by the facility. If the facility is to select both representatives, it must make one  
1278 selection from among the following persons in the order of listing: the patient's mental  
1279 health care agent, legal guardian, spouse, adult child, parent, attorney, adult next of kin, or  
1280 adult friend, provided that, in the case of a patient whose representative or representatives  
1281 have been appointed by the court under Code Section 37-7-62, the facility shall not select  
1282 a different representative. The second representative shall also be selected from the above  
1283 list but without regard to the order of listing, provided that the second representative shall  
1284 not be the person who filed the petition to have the patient admitted to the facility.

1285 (c) If the facility is unable to secure at least two representatives after diligent search or if  
1286 the department is the guardian of the patient, that fact shall be entered in the patient's  
1287 clinical record and the facility shall apply to the court in the county of the patient's  
1288 residence for the appointment of a guardian ad litem, which guardian ad litem shall not be  
1289 the department. On application of any person or on its own motion, the court may also  
1290 appoint a guardian ad litem for a patient for whom two representatives have been named  
1291 whenever the appointment of a guardian ad litem is deemed necessary for protection of the  
1292 patient's rights. Such guardian ad litem shall also act as representative of the patient and  
1293 shall have the powers granted to representatives by this chapter.

1294 (d) At any time notice is required by this chapter to be given to the patient's  
1295 representatives, such notice shall be served on the representatives designated under this  
1296 Code section. The patient's guardian ad litem, if any, shall likewise be served. Unless  
1297 otherwise provided, notice may be served in person or by ~~first class~~ first-class mail. When  
1298 notice is served by mail, a record shall be made of the date of mailing and shall be placed  
1299 in the patient's clinical record. Service shall be completed upon mailing.

1300 (e) At any time notice is required by this chapter to be given to the patient, the date on  
1301 which notice is given shall be entered on the patient's clinical record. If the patient is unable  
1302 to comprehend the written notice, a reasonable effort shall be made to explain the notice  
1303 to him or her.

1304 (f) At the time a court enters an order pursuant to this chapter, such order and notice of the  
1305 date of entry of the order shall be served on the patient and his or her representatives as  
1306 provided in subsection (d) of this Code section.

1307 (g) Notice of an involuntary patient's admission to a facility shall be given to his or her  
1308 representatives in writing. If such involuntary admission is to an emergency receiving  
1309 facility, notice shall also be given by that facility to the patient's representatives by  
1310 telephone or in person as soon as possible.

1311 (h) In every instance in which a court shall appoint a guardian ad litem for any person  
1312 pursuant to the terms of this chapter, such guardianship shall be for the limited purpose  
1313 stated in the order of the court and shall expire automatically after 90 days or after a lesser  
1314 time stated in the order. The responsibility of the guardian ad litem shall not extend  
1315 beyond the specific purpose of the appointment."

1316 **SECTION 2-29.**

1317 Said title is further amended by revising Code Section 37-7-148, relating to rights of patients  
1318 or representatives to petition for writ of habeas corpus and for judicial protection of rights  
1319 and privileges granted by this chapter, as follows:

1320 "37-7-148.

1321 (a) At any time and without notice, a person detained by a facility, a mental health care  
1322 agent named in such person's psychiatric advance directive, a legal guardian of such  
1323 person, or a relative or friend on behalf of such person may petition, as provided by law,  
1324 for a writ of habeas corpus to question the cause and legality of detention and to request  
1325 any court of competent jurisdiction on its own initiative to issue a writ for release, provided  
1326 that, in the case of any such petition for the release of a person detained in a facility  
1327 pursuant to a court order under Code Section 17-7-130 or 17-7-131, a copy of the petition  
1328 along with proper certificate of service shall also be served upon the presiding judge of the  
1329 court ordering such detention and the prosecuting attorney for such court, which service  
1330 may be made by certified mail or statutory overnight delivery, return receipt requested.

1331 (b) A patient or his or her representatives may file a petition in the appropriate court  
1332 alleging that the patient is being unjustly denied a right or privilege granted by this chapter  
1333 or that a procedure authorized by this chapter is being abused. Upon the filing of such a  
1334 petition, the court shall have the authority to conduct a judicial inquiry and to issue  
1335 appropriate orders to correct any abuse under this chapter."

1336

### SECTION 2-30.

1337 Title 49 of the Official Code of Georgia Annotated, relating to social services, is amended  
1338 in Code Section 49-6-72, relating to definitions relative to the "Georgia Family Caregiver  
1339 Support Act," by revising paragraph (9) as follows:

1340 "(9) 'Primary caregiver' means the one identified relative or other person in a relationship  
1341 of responsibility, such as an agent under a valid durable power of attorney for health care,  
1342 a or health care agent under a valid advance directive for health care, or a mental health  
1343 care agent under a valid psychiatric advance directive, who has assumed the primary  
1344 responsibility for the provision of care needed to maintain the physical or mental health  
1345 of a functionally dependent older adult or other adult suffering from dementia, who lives

1346 in the same residence with such individual, and who does not receive financial  
1347 compensation for the care provided. A substantiated case of abuse, neglect, or  
1348 exploitation, as defined in Chapter 5 of Title 30, the 'Disabled Adults and Elder Persons  
1349 Protection Act,' or pursuant to any other civil or criminal statute regarding an older adult,  
1350 shall prohibit a primary caregiver from receiving benefits under this article unless  
1351 authorized by the department to prevent further abuse."

1352 **SECTION 2-31.**

1353 Said title is further amended in Code Section 49-6-82, relating to definitions relative to  
1354 licensure of adult day centers, by revising paragraph (7) as follows:

1355 "(7) 'Primary caregiver' means the one identified relative or other person in a relationship  
1356 of responsibility, such as an agent under a valid durable power of attorney for health care,  
1357 a or health care agent under a valid advance directive for health care, or a mental health  
1358 care agent under a valid psychiatric advance directive, who has assumed the primary  
1359 responsibility for the provision of care needed to maintain the physical or mental health  
1360 of an aging adult, who lives in the same residence with such individual, and who does not  
1361 receive financial compensation for the care provided."

1362 **PART III**

1363 **SECTION 3-1.**

1364 All laws and parts of laws in conflict with this Act are repealed.