CIVIL PRACTICE AND REMEDIES CODE

TITLE 6. MISCELLANEOUS PROVISIONS

CHAPTER 137. DECLARATION FOR MENTAL HEALTH TREATMENT

Sec. 137.001. DEFINITIONS. In this chapter:

(1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

(2) "Attending physician" means the physician, selected by or assigned to a patient, who has primary responsibility for the treatment and care of the patient.

(3) "Declaration for mental health treatment" means a document making a declaration of preferences or instructions regarding mental health treatment.

(4) "Emergency" means a situation in which it is immediately necessary to treat a patient to prevent:

(A) probable imminent death or serious bodily injury to the patient because the patient:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily injury to the patient; or

(ii) is behaving in a manner that indicates that the patient is unable to satisfy the patient's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts of the patient.

(5) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care or treatment, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician or other health care provider, a residential care provider, or an inpatient mental health facility as defined by Section 571.003, Health and Safety Code.

(6) "Incapacitated" means that, in the opinion of the court in a guardianship proceeding under Title 3, Estates Code, or in a medication hearing under Section 574.106, Health and Safety Code, a person lacks the ability to understand the nature and

consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment, and lacks the ability to make mental health treatment decisions because of impairment.

(7) "Mental health treatment" means electroconvulsive or other convulsive treatment, treatment of mental illness with psychoactive medication as defined by Section 574.101, Health and Safety Code, or emergency mental health treatment.

(8) "Principal" means a person who has executed a declaration for mental health treatment.

Added by Acts 1997, 75th Leg., ch. 1318, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 464, Sec. 1, eff. June 18, 1999.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.009, eff. September 1, 2017.

Sec. 137.002. PERSONS WHO MAY EXECUTE DECLARATION FOR MENTAL HEALTH TREATMENT; PERIOD OF VALIDITY. (a) An adult who is not incapacitated may execute a declaration for mental health treatment. The preferences or instructions may include consent to or refusal of mental health treatment.

(b) A declaration for mental health treatment is effective on execution as provided by this chapter. Except as provided by Subsection (c), a declaration for mental health treatment expires on the third anniversary of the date of its execution or when revoked by the principal, whichever is earlier.

(c) If the declaration for mental health treatment is in effect and the principal is incapacitated on the third anniversary of the date of its execution, the declaration remains in effect until the principal is no longer incapacitated.

Added by Acts 1997, 75th Leg., ch. 1318, Sec. 1, eff. Sept. 1, 1997.

Sec. 137.003. EXECUTION AND WITNESSES; EXECUTION AND ACKNOWLEDGMENT BEFORE NOTARY PUBLIC. (a) A declaration for mental health treatment must be:

(1) signed by the principal in the presence of two or

more subscribing witnesses; or

(2) signed by the principal and acknowledged before a notary public.

(b) A witness may not, at the time of execution, be:

(1) the principal's health or residential care provider or an employee of that provider;

(2) the operator of a community health care facility providing care to the principal or an employee of an operator of the facility;

(3) a person related to the principal by blood, marriage, or adoption;

(4) a person entitled to any part of the estate of the principal on the death of the principal under a will, trust, or deed in existence or who would be entitled to any part of the estate by operation of law if the principal died intestate; or

(5) a person who has a claim against the estate of the principal.

(c) For a witness's signature to be effective, the witness must sign a statement affirming that, at the time the declaration for mental health treatment was signed, the principal:

(1) appeared to be of sound mind to make a mental health treatment decision;

(2) has stated in the witness's presence that the principal was aware of the nature of the declaration for mental health treatment and that the principal was signing the document voluntarily and free from any duress; and

(3) requested that the witness serve as a witness to the principal's execution of the document.

Added by Acts 1997, 75th Leg., ch. 1318, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 349 (H.B. 1787), Sec. 1, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 349 (H.B. 1787), Sec. 2, eff. September 1, 2017.

Sec. 137.004. HEALTH CARE PROVIDER TO ACT IN ACCORDANCE WITH DECLARATION FOR MENTAL HEALTH TREATMENT. A physician or other

health care provider shall act in accordance with the declaration for mental health treatment when the principal has been found to be incapacitated. A physician or other provider shall continue to seek and act in accordance with the principal's informed consent to all mental health treatment decisions if the principal is capable of providing informed consent.

Added by Acts 1997, 75th Leg., ch. 1318, Sec. 1, eff. Sept. 1, 1997.

Sec. 137.005. LIMITATION ON LIABILITY. (a) An attending physician, health or residential care provider, or person acting for or under an attending physician's or health or residential care provider's control is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith under the terms of a declaration for mental health treatment.

(b) An attending physician, health or residential care provider, or person acting for or under an attending physician's or health or residential care provider's control does not engage in professional misconduct for:

(1) failure to act in accordance with a declaration for mental health treatment if the physician, provider, or other person:

(A) was not provided with a copy of the declaration; and

(B) had no knowledge of the declaration after a good faith attempt to learn of the existence of a declaration; or

(2) acting in accordance with a directive for mental health treatment after the directive has expired or has been revoked if the physician, provider, or other person does not have knowledge of the expiration or revocation.

Added by Acts 1997, 75th Leg., ch. 1318, Sec. 1, eff. Sept. 1, 1997.

Sec. 137.006. DISCRIMINATION RELATING TO EXECUTION OF DECLARATION FOR MENTAL HEALTH TREATMENT. A health or residential care provider, health care service plan, insurer issuing disability insurance, self-insured employee benefit plan, or nonprofit hospital service plan may not:

(1) charge a person a different rate solely because the person has executed a declaration for mental health treatment;

(2) require a person to execute a declaration for mental health treatment before:

(A) admitting the person to a hospital, nursing home, or residential care home;

(B) insuring the person; or

(C) allowing the person to receive health or residential care;

(3) refuse health or residential care to a person solely because the person has executed a declaration for mental health treatment; or

(4) discharge the person solely because the person has or has not executed a declaration for mental health treatment.

Added by Acts 1997, 75th Leg., ch. 1318, Sec. 1, eff. Sept. 1, 1997.

Sec. 137.007. USE AND EFFECT OF DECLARATION FOR MENTAL HEALTH TREATMENT. (a) On being presented with a declaration for mental health treatment, a physician or other health care provider shall make the declaration a part of the principal's medical record. When acting in accordance with a declaration for mental health treatment, a physician or other health care provider shall comply with the declaration to the fullest extent possible.

(b) If a physician or other provider is unwilling at any time to comply with a declaration for mental health treatment, the physician or provider may withdraw from providing treatment consistent with the exercise of independent medical judgment and must promptly:

(1) make a reasonable effort to transfer care for the principal to a physician or provider who is willing to comply with the declaration;

(2) notify the principal, or principal's guardian, if appropriate, of the decision to withdraw; and

(3) record in the principal's medical record the notification and, if applicable, the name of the physician or provider to whom the principal is transferred.

Added by Acts 1997, 75th Leg., ch. 1318, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 464, Sec. 2, eff. June 18, 1999.

Sec. 137.008. DISREGARD OF DECLARATION FOR MENTAL HEALTH TREATMENT. (a) A physician or other health care provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in a declaration for mental health treatment only:

(1) if the principal is under an order for temporary or extended mental health services under Section 574.034, 574.0345, 574.035, or 574.0355, Health and Safety Code, and treatment is authorized in compliance with Section 574.106, Health and Safety Code; or

(2) in case of an emergency when the principal's instructions have not been effective in reducing the severity of the behavior that has caused the emergency.

(b) A declaration for mental health treatment does not limit any authority provided by Chapter 573 or 574, Health and Safety Code:

(1) to take a person into custody; or

(2) to admit or retain a person in a mental health treatment facility.

(c) This section does not apply to the use of electroconvulsive treatment or other convulsive treatment.

Added by Acts 1997, 75th Leg., ch. 1318, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 464, Sec. 3, eff. June 18, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 582 (S.B. 362), Sec. 1, eff. September 1, 2019.

Sec. 137.009. CONFLICTING OR CONTRARY PROVISIONS. (a) Mental health treatment instructions contained in a declaration executed in accordance with this chapter supersede any contrary or conflicting instructions given by:

(1) a medical power of attorney under Subchapter D, Chapter 166, Health and Safety Code; or

(2) a guardian appointed under Title 3, Estates Code, after the execution of the declaration.

(b) Mental health treatment instructions contained in a declaration executed in accordance with this chapter shall be conclusive evidence of a declarant's preference in a medication hearing under Section 574.106, Health and Safety Code.

Added by Acts 1997, 75th Leg., ch. 1318, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.010, eff. September 1, 2017.

Sec. 137.010. REVOCATION. (a) A declaration for mental health treatment is revoked when a principal who is not incapacitated:

(1) notifies a licensed or certified health or residential care provider of the revocation;

(2) acts in a manner that demonstrates a specific intent to revoke the declaration; or

(3) executes a later declaration for mental health treatment.

(b) A principal's health or residential care provider who is informed of or provided with a revocation of a declaration for mental health treatment immediately shall:

(1) record the revocation in the principal's medical record; and

(2) give notice of the revocation to any other health or residential care provider the provider knows to be responsible for the principal's care.

Added by Acts 1997, 75th Leg., ch. 1318, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 464, Sec. 4, eff. June 18, 1999.

Sec. 137.011. FORM OF DECLARATION FOR MENTAL HEALTH TREATMENT. The declaration for mental health treatment must be in substantially the following form:

DECLARATION FOR MENTAL HEALTH TREATMENT

I, _____, being an adult of sound mind, wilfully

and voluntarily make this declaration for mental health treatment to be followed if it is determined by a court that my ability to understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment, is impaired to such an extent that I lack the capacity to make mental health treatment decisions. "Mental health treatment" means electroconvulsive or other convulsive treatment, treatment of mental illness with psychoactive medication, and preferences regarding emergency mental health treatment.

(OPTIONAL PARAGRAPH) I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

_____

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

_____ I consent to the administration of the following medications:

_____

_____ I do not consent to the administration of the following medications:

_____

_____ I consent to the administration of a federal Food and Drug Administration approved medication that was only approved and in existence after my declaration and that is considered in the same class of psychoactive medications as stated below:

_____

Conditions or limitations: _____

CONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:

_____ I consent to the administration of convulsive treatment.

_____ I do not consent to the administration of convulsive

treatment.

Conditions or limitations: _____

PREFERENCES FOR EMERGENCY TREATMENT

In an emergency, I prefer the following treatment FIRST (circle one) Restraint/Seclusion/Medication.

In an emergency, I prefer the following treatment SECOND (circle one) Restraint/Seclusion/Medication.

In an emergency, I prefer the following treatment THIRD (circle one) Restraint/Seclusion/Medication.

_____ I prefer a male/female to administer restraint, seclusion, and/or medications.

Options for treatment prior to use of restraint, seclusion, and/or medications:

_____

Conditions or limitations: _____

ADDITIONAL PREFERENCES OR INSTRUCTIONS

_____

Conditions or limitations: _____

Signature of Principal/Date: _____

SIGNATURE ACKNOWLEDGED BEFORE NOTARY PUBLIC

State of Texas

County of_____

This instrument was acknowledged before me on _____(date) by _____(name of notary public).

_____

NOTARY PUBLIC, State of Texas

Printed name of Notary Public:

_____

My commission expires:

_____

SIGNATURE IN PRESENCE OF TWO WITNESSES

STATEMENT OF WITNESSES

I declare under penalty of perjury that the principal's name has been represented to me by the principal, that the principal signed or acknowledged this declaration in my presence, that I believe the principal to be of sound mind, that the principal has affirmed that the principal is aware of the nature of the document

and is signing it voluntarily and free from duress, that the principal requested that I serve as witness to the principal's execution of this document, and that I am not a provider of health or residential care to the principal, an employee of a provider of health or residential care to the principal, an operator of a community health care facility providing care to the principal, or an employee of an operator of a community health care facility providing care to the principal.

I declare that I am not related to the principal by blood, marriage, or adoption and that to the best of my knowledge I am not entitled to and do not have a claim against any part of the estate of the principal on the death of the principal under a will or by operation of law.

Witness Signature: _____

Print Name: _____

Date: _____

Address: _____

Witness Signature: _____

Print Name: _____

Date: _____

Address: _____

NOTICE TO PERSON MAKING A DECLARATION FOR MENTAL HEALTH TREATMENT

This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

This document allows you to make decisions in advance about mental health treatment and specifically three types of mental health treatment: psychoactive medication, convulsive therapy, and emergency mental health treatment. The instructions that you include in this declaration will be followed only if a court believes that you are incapacitated to make treatment decisions. Otherwise, you will be considered able to give or withhold consent for the treatments.

This document will continue in effect for a period of three years unless you become incapacitated to participate in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapacitated.

You have the right to revoke this document in whole or in part at any time you have not been determined to be incapacitated. YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED BY A COURT TO BE INCAPACITATED. A revocation is effective when it is communicated to your attending physician or other health care provider.

If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration is not valid unless it is either acknowledged before a notary public or signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

Added by Acts 1997, 75th Leg., ch. 1318, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 349 (H.B. 1787), Sec. 3, eff. September 1, 2017.