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S.B. No. 1752

A BILL TO BE ENTITLED

AN ACT

relating to declarations for mental health treatment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 137, Civil Practice and Remedies Code, is transferred to Chapter 576, Health and Safety Code, redesignated as Subchapter C, Chapter 576, Health and Safety Code, and amended to read as follows:

SUBCHAPTER C [~~CHAPTER 137~~]. DECLARATION FOR MENTAL HEALTH TREATMENT

Sec. 576.051 [~~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

1 or attempting to commit suicide or serious bodily injury to the
2 patient; or

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

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

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

15 (6) "Incapacitated" means that, in the opinion of the
16 court in a guardianship proceeding under Chapter XIII, Texas
17 Probate Code, or in a medication hearing under Section 574.106[~~,
18 Health and Safety Code~~], a person lacks the ability to understand
19 the nature and consequences of a proposed treatment, including the
20 benefits, risks, and alternatives to the proposed treatment, and
21 lacks the ability to make mental health treatment decisions because
22 of impairment.

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

27 (8) "Principal" means a person who has executed a

1 declaration for mental health treatment.

2 Sec. 576.052 [~~137.002~~]. PERSONS WHO MAY EXECUTE
3 DECLARATION FOR MENTAL HEALTH TREATMENT; PERIOD OF VALIDITY.

4 (a) An adult who is not incapacitated may execute a declaration
5 for mental health treatment. The preferences or instructions may
6 include consent to or refusal of mental health treatment.

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

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

16 Sec. 576.053 [~~137.003~~]. EXECUTION AND WITNESSES. (a) A
17 declaration for mental health treatment must be signed by the
18 principal in the presence of two or more subscribing witnesses.

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

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

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

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

27 (4) a person entitled to any part of the estate of the

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

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

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

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

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

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

17 Sec. 576.054 [~~137.004~~]. HEALTH CARE PROVIDER TO ACT IN
18 ACCORDANCE WITH DECLARATION FOR MENTAL HEALTH TREATMENT. A
19 physician or other health care provider shall act in accordance
20 with the declaration for mental health treatment when the principal
21 has been found to be incapacitated. A physician or other provider
22 shall continue to seek and act in accordance with the principal's
23 informed consent to all mental health treatment decisions if the
24 principal is capable of providing informed consent.

25 Sec. 576.055 [~~137.005~~]. LIMITATION ON LIABILITY. (a) An
26 attending physician, health or residential care provider, or person
27 acting for or under an attending physician's or health or

1 residential care provider's control is not subject to criminal or
2 civil liability and has not engaged in professional misconduct for
3 an act or omission if the act or omission is done in good faith under
4 the terms of a declaration for mental health treatment.

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

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

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

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

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

20 Sec. 576.056 [~~137.006~~]. DISCRIMINATION RELATING TO
21 EXECUTION OF DECLARATION FOR MENTAL HEALTH TREATMENT. A health or
22 residential care provider, health care service plan, insurer
23 issuing disability insurance, self-insured employee benefit plan,
24 or nonprofit hospital service plan may not:

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

27 (2) require a person to execute a declaration for

1 mental health treatment before:

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

4 (B) insuring the person; or

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

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

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

12 Sec. 576.057 [~~137.007~~]. USE AND EFFECT OF DECLARATION FOR
13 MENTAL HEALTH TREATMENT. (a) On being presented with a
14 declaration for mental health treatment, a physician or other
15 health care provider shall make the declaration a part of the
16 principal's medical record. When acting in accordance with a
17 declaration for mental health treatment, a physician or other
18 health care provider shall comply with the declaration to the
19 fullest extent possible.

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

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

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

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

6 Sec. 576.058 [~~137.008~~]. DISREGARD OF DECLARATION FOR
7 MENTAL HEALTH TREATMENT. (a) A physician or other health care
8 provider may subject the principal to mental health treatment in a
9 manner contrary to the principal's wishes as expressed in a
10 declaration for mental health treatment only:

11 (1) if the principal is under an order for temporary or
12 extended mental health services under Section 574.034 or 574.035[~~7~~
13 ~~Health and Safety Code~~], and treatment is authorized in compliance
14 with Section 574.106[~~7~~, ~~Health and Safety Code~~]; or

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

18 (b) A declaration for mental health treatment does not limit
19 any authority provided by Chapter 573 or 574[~~7~~, ~~Health and Safety~~
20 ~~Code~~]:

21 (1) to take a person into custody; or

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

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

26 Sec. 576.059 [~~137.009~~]. CONFLICTING OR CONTRARY
27 PROVISIONS. (a) Mental health treatment instructions contained

1 in a declaration executed in accordance with this chapter supersede
2 any contrary or conflicting instructions given by:

3 (1) a durable power of attorney under Subchapter D,
4 Chapter 166 [~~Chapter 135~~]; or

5 (2) a guardian appointed under Chapter XIII, Texas
6 Probate Code, after the execution of the declaration.

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

11 Sec. 576.060 [~~137.010~~]. REVOCATION. (a) A declaration
12 for mental health treatment is revoked when a principal who is not
13 incapacitated:

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

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

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

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

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

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

1 Sec. 576.061 [~~137.011~~]. FORM OF DECLARATION FOR MENTAL
2 HEALTH TREATMENT. The declaration for mental health treatment must
3 be in substantially the following form:

4 DECLARATION FOR MENTAL HEALTH TREATMENT

5 I, _____, being an adult of sound mind, wilfully
6 and voluntarily make this declaration for mental health treatment
7 to be followed if it is determined by a court that my ability to
8 understand the nature and consequences of a proposed treatment,
9 including the benefits, risks, and alternatives to the proposed
10 treatment, is impaired to such an extent that I lack the capacity to
11 make mental health treatment decisions. "Mental health treatment"
12 means electroconvulsive or other convulsive treatment, treatment
13 of mental illness with psychoactive medication, and preferences
14 regarding emergency mental health treatment.

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

19 _____

20 PSYCHOACTIVE MEDICATIONS

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

24 _____ I consent to the administration of the following
25 medications:

26 _____

27 _____ I do not consent to the administration of the following

1 medications:

2 _____

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

7 _____

8 Conditions or limitations: _____

9 CONVULSIVE TREATMENT

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

13 _____ I consent to the administration of convulsive
14 treatment.

15 _____ I do not consent to the administration of convulsive
16 treatment.

17 Conditions or limitations: _____

18 PREFERENCES FOR EMERGENCY TREATMENT

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

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

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

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

27 Options for treatment prior to use of restraint, seclusion,

1 and/or medications:

2 _____

3 Conditions or limitations: _____

4 ADDITIONAL PREFERENCES OR INSTRUCTIONS

5 _____

6 Conditions or limitations: _____

7 Signature of Principal/Date: _____

8 STATEMENT OF WITNESSES

9 I declare under penalty of perjury that the principal's name
10 has been represented to me by the principal, that the principal
11 signed or acknowledged this declaration in my presence, that I
12 believe the principal to be of sound mind, that the principal has
13 affirmed that the principal is aware of the nature of the document
14 and is signing it voluntarily and free from duress, that the
15 principal requested that I serve as witness to the principal's
16 execution of this document, and that I am not a provider of health
17 or residential care to the principal, an employee of a provider of
18 health or residential care to the principal, an operator of a
19 community health care facility providing care to the principal, or
20 an employee of an operator of a community health care facility
21 providing care to the principal.

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

27 Witness Signature: _____

1 Print Name: _____

2 Date: _____

3 Address: _____

4 Witness Signature: _____

5 Print Name: _____

6 Date: _____

7 Address: _____

8 NOTICE TO PERSON MAKING A DECLARATION FOR MENTAL HEALTH TREATMENT

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

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

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

24 You have the right to revoke this document in whole or in part
25 at any time you have not been determined to be incapacitated. YOU
26 MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED BY A COURT
27 TO BE INCAPACITATED. A revocation is effective when it is

1 communicated to your attending physician or other health care
2 provider.

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

8 SECTION 2. (a) Subdivision (6), Section 576.051, Health
9 and Safety Code, as effective September 1, 2013, is amended to read
10 as follows:

11 (6) "Incapacitated" means that, in the opinion of the
12 court in a guardianship proceeding under Title 3, Estates [~~Chapter~~
13 ~~XIII, Texas Probate~~] Code, or in a medication hearing under Section
14 574.106, a person lacks the ability to understand the nature and
15 consequences of a proposed treatment, including the benefits,
16 risks, and alternatives to the proposed treatment, and lacks the
17 ability to make mental health treatment decisions because of
18 impairment.

19 (b) This section takes effect January 1, 2014.

20 SECTION 3. (a) Subsection (a), Section 576.059, Health and
21 Safety Code, as effective September 1, 2013, is amended to read as
22 follows:

23 (a) Mental health treatment instructions contained in a
24 declaration executed in accordance with this chapter supersede any
25 contrary or conflicting instructions given by:

26 (1) a durable power of attorney under Subchapter D,
27 Chapter 166; or

1 (2) a guardian appointed under Title 3, Estates
2 [~~Chapter XIII, Texas Probate~~] Code, after the execution of the
3 declaration.

4 (b) This section takes effect January 1, 2014.

5 SECTION 4. Except as otherwise provided by this Act, this
6 Act takes effect September 1, 2013.