

Senate File 372 - Introduced

SENATE FILE _____
BY RIELLY

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act authorizing the use of advance directives for mental
2 health care and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 2090XS 82
5 rh/cf/24

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1 1 Section 1. NEW SECTION. 144C.1 SHORT TITLE.
1 2 This Act shall be known and may be cited as the "Advance
1 3 Directive for Mental Health Care Act".
1 4 Sec. 2. NEW SECTION. 144C.2 DEFINITIONS.
1 5 For purposes of this chapter, unless the context otherwise
1 6 requires:
1 7 1. "Advance directive" means a written document attested
1 8 to by two witnesses in which the principal makes a declaration
1 9 of instructions or preferences or appoints an attorney in fact
1 10 to make decisions on behalf of the principal regarding the
1 11 principal's mental health care or treatment, or both, in
1 12 accordance with this chapter.
1 13 2. "Attending physician" means the same as defined in
1 14 section 144A.2.
1 15 3. "Attorney in fact" means an individual who is
1 16 designated by a durable power of attorney for mental health
1 17 care as an agent to make mental health care decisions on
1 18 behalf of a principal and has consented to act in that
1 19 capacity.
1 20 4. "Capacity" means an individual is capable of making
1 21 mental health care treatment decisions. Evidence of an
1 22 individual's capacity includes but is not limited to the
1 23 individual's awareness that the individual has a mental
1 24 illness and needs treatment, provided the individual actually
1 25 has a mental illness and needs treatment. An individual who
1 26 makes a mental health decision concerning the individual's
1 27 self in ways that are considered to be acceptable, unusual, or
1 28 eccentric shall be considered to have the capacity to make
1 29 that decision, provided the decision is an appropriate option
1 30 for the jurisdiction in which the decision is made.
1 31 5. "Central repository" means an entity that keeps and
1 32 stores, in an appropriate form, executed advance directives,
1 33 and upon request sends such information to treatment providers
1 34 treating a declarant.
1 35 6. "Declarant" means a person who has executed an advance
2 1 directive.
2 2 7. "Licensed physician" means an individual licensed
2 3 pursuant to chapter 148, 150, or 150A.
2 4 8. "Mental health care" means any care, treatment,
2 5 service, or procedure to maintain, diagnose, or treat an
2 6 individual's mental condition.
2 7 9. a. "Mental illness" means a mental disease, mental
2 8 disorder, or lack of capacity that causes an individual to
2 9 become emotionally unstable or cognitively impaired to such a
2 10 degree so that any of the following conditions exist:
2 11 (1) The individual's life activities are substantially
2 12 affected.
2 13 (2) The individual poses a danger to the individual's self
2 14 or others.
2 15 (3) The individual is incapable of making a mental health
2 16 care treatment decision.
2 17 b. "Mental illness" does not include "mental retardation"
2 18 as defined in section 222.2, subsection 5, or insanity,
2 19 diminished responsibility, or mental incompetency as the terms
2 20 are defined and used in the Iowa criminal code or in the rules

2 21 of criminal procedure.

2 22 10. "Qualified mental health professional" means a
2 23 psychiatrist licensed under chapter 147, 148, or 150A, or a
2 24 licensed physician or qualified mental health professional as
2 25 defined in section 229.1, who is licensed, certified, or
2 26 otherwise authorized or permitted by the law of this state to
2 27 administer mental health care in the ordinary course of
2 28 business or in the practice of a profession.

2 29 Sec. 3. NEW SECTION. 144C.3 ADVANCE DIRECTIVE
2 30 REQUIREMENTS.

2 31 1. INDIVIDUAL REQUIREMENTS. In order to execute an
2 32 advance directive, an individual must be at least eighteen
2 33 years of age, and at the time the advance directive is
2 34 executed, the individual must have the capacity to execute it.

2 35 2. PROPER EXECUTION. In order to be properly executed, an
3 1 advance directive must comply with all of the following
3 2 requirements:

3 3 a. The advance directive is in writing.

3 4 b. The advance directive is signed and dated by the
3 5 declarant after the declaration expressing the treatment
3 6 desired has been made.

3 7 c. The signing of the advance directive by the declarant
3 8 is attested to by at least two qualified witnesses.

3 9 3. QUALIFIED WITNESSES. A person must meet all of the
3 10 following requirements to be qualified to witness an advance
3 11 directive:

3 12 a. The person is at least eighteen years of age.

3 13 b. The person has the capacity to witness the signing of
3 14 the advance directive.

3 15 c. The person is not an immediate family member of the
3 16 declarant.

3 17 d. The person is not designated as an attorney in fact or
3 18 a substitute attorney in fact in the advance directive.

3 19 4. PRESUMPTION OF CAPACITY.

3 20 a. An advance directive executed in accordance with this
3 21 section creates a presumption that the declarant had the
3 22 capacity to execute the advance directive and the burden of
3 23 proving the declarant did not have the capacity is on the
3 24 party asserting that the declarant did not have the capacity.

3 25 b. In addition to the qualified witnesses, the execution
3 26 of an advance directive may also be witnessed by a qualified
3 27 mental health professional who by training or experience is
3 28 capable of determining whether a declarant has the capacity
3 29 for executing the advance directive. If the qualified mental
3 30 health professional certifies on the advance directive that
3 31 the qualified mental health professional examined the
3 32 declarant in accordance with applicable professional standards
3 33 and as a result of the examination the qualified mental health
3 34 professional determined that the declarant had the capacity to
3 35 execute the advance directive at the time the declarant signed
4 1 the advance directive, there shall be a strong but rebuttable
4 2 presumption that the declarant had the capacity to execute the
4 3 advance directive. The qualified mental health professional's
4 4 certification of capacity does not constitute an endorsement
4 5 of the content of the advance directive or any associated
4 6 treatment declaration.

4 7 Sec. 4. NEW SECTION. 144C.4 REQUIREMENTS OF MENTAL
4 8 HEALTH CARE PROVIDERS.

4 9 1. GENERAL REQUIREMENT. A mental health care provider
4 10 shall maintain written policies and procedures in accordance
4 11 with this section. The policies and procedures shall apply to
4 12 any individual adult with the capacity to execute an advance
4 13 directive who is receiving mental health care treatment from
4 14 the provider or through the provider.

4 15 2. WRITTEN MATERIALS. A mental health care provider shall
4 16 deliver all of the following information in writing to an
4 17 individual adult who is subject to subsection 1:

4 18 a. Information on the individual's rights under Iowa law
4 19 to make decisions concerning the mental health care treatment
4 20 provided to the individual including but not limited to the
4 21 right to accept or refuse mental health care treatment and the
4 22 right to execute an advance directive.

4 23 b. An objective statement of the effects of the individual
4 24 executing or not executing an advance directive, including the
4 25 associated advantages and disadvantages.

4 26 c. The policies of the mental health care provider
4 27 regarding the provider's implementation of an individual's
4 28 rights under Iowa law to make mental health care treatment
4 29 decisions.

4 30 d. A copy of any advance directive sample form developed
4 31 to implement the provisions of this chapter.

4 32 e. The name of a person who can provide the individual
4 33 with additional information concerning advance directive
4 34 forms.

4 35 3. MEDICAL RECORD. The mental health care provider shall
5 1 document in the medical record of an individual who is subject
5 2 to subsection 1, whether the individual has executed an
5 3 advance directive.

5 4 4. COMPLIANCE. The mental health care provider shall
5 5 ensure the provider's staff and persons associated with the
5 6 provider comply with the requirements of this chapter.

5 7 5. EDUCATION.

5 8 a. The mental health care provider shall provide education
5 9 concerning this chapter to the provider's staff and persons
5 10 associated with the provider.

5 11 b. The mental health care provider shall make reasonable
5 12 efforts to inform the public concerning advance directives and
5 13 associated issues.

5 14 6. EXCEPTION. A mental health care provider is not
5 15 required to provide written materials in accordance with
5 16 subsection 2 if any of the following circumstances are
5 17 applicable:

5 18 a. The individual adult received the written materials
5 19 within the immediately preceding twelve-month period.

5 20 b. The individual adult has executed an advance directive
5 21 and the advance directive does not expire during the ensuing
5 22 six-month period or longer.

5 23 7. INTERPRETATION. The provisions of this section apply
5 24 in addition to other requirements applicable under federal or
5 25 state law and shall be interpreted in a manner consistent with
5 26 state or federal law. This section shall not be interpreted
5 27 as requiring a mental health care provider, the provider's
5 28 staff, or persons associated with the provider to act in a
5 29 manner that is inconsistent with federal or state law or
5 30 contrary to personal beliefs.

5 31 Sec. 5. NEW SECTION. 144C.5 IMPLEMENTATION OF ADVANCE
5 32 DIRECTIVE.

5 33 1. PREREQUISITES. In order for an advance directive to be
5 34 binding, the declarant must have had the capacity to execute
5 35 the advance directive at the time of execution. In addition,
6 1 the declarant shall not have been the subject of duress,
6 2 fraud, or undue influence that affected the declarant's
6 3 instructions or choices of persons to serve as an attorney in
6 4 fact or substitute attorney in fact for the declarant.

6 5 2. IMPLEMENTATION OF ADVANCE DIRECTIVE. An advance
6 6 directive shall be implemented at the time a qualified mental
6 7 health professional exercises professional judgment in
6 8 determining that the declarant does not have the capacity to
6 9 make decisions concerning the declarant's mental health care
6 10 treatment. If there are two or more qualified mental health
6 11 professionals providing treatment to the declarant and the
6 12 professionals do not agree regarding the declarant's capacity,
6 13 the decision regarding the declarant's capacity shall be made
6 14 by the chief medical officer of the mental health care
6 15 provider or the chief medical officer's designee.

6 16 3. DETERMINATION OF CAPACITY. A determination of a
6 17 declarant's capacity or incapacity to make decisions
6 18 concerning the declarant's mental health care treatment shall
6 19 be deemed to create a presumption that the declarant conforms
6 20 to that determination. Unless extraordinary circumstances
6 21 exist, a determination of a declarant's capacity or incapacity
6 22 made by use of the MacArthur competence assessment tool for
6 23 treatment or similar instrument recognized as valid and
6 24 reliable for determining capacity shall be accepted by courts
6 25 and by mental health care treatment and support service
6 26 providers as outweighing contrary clinical determinations of
6 27 capacity or incapacity.

6 28 4. BINDING ON MENTAL HEALTH CARE PROVIDERS. If a person
6 29 providing mental health care or support services to a
6 30 declarant possesses or has knowledge of the declarant's
6 31 advance directive, the person shall make all reasonable
6 32 efforts to follow the terms of the advance directive. An
6 33 advance directive is legally binding on a person providing
6 34 mental health care or support services to the declarant unless
6 35 any of the following are applicable:

7 1 a. If the person providing mental health care or support
7 2 services refuses or is unwilling to provide the care or
7 3 support to the declarant in accordance with the advance
7 4 directive because of personal beliefs or conscience, the
7 5 person shall arrange to transfer the declarant without delay
7 6 to another provider who is qualified and willing to provide
7 7 care or support in accordance with the advance directive.

7 8 b. If the qualified mental health professional providing
7 9 care to the declarant determines that any part of the care
7 10 instructions provided pursuant to the advance directive do not
7 11 comply with or are not consistent with accepted medical or
7 12 mental health care practice, the qualified mental health
7 13 professional shall not comply with that part.

7 14 5. ATTORNEY IN FACT DECISIONS. If the advance directive
7 15 designates an attorney in fact to make mental health care
7 16 treatment decisions for the declarant in accordance with the
7 17 advance directive instructions but any of the following
7 18 circumstances exist, the decisions of the attorney in fact
7 19 regarding the declarant's mental health care shall prevail
7 20 over the terms of the instructions:

7 21 a. The advance directive instructions do not identify a
7 22 treatment within accepted medical or mental health care
7 23 practice for the declarant's condition or are inconsistent
7 24 with such practice.

7 25 b. The advance directive instructions do not address the
7 26 declarant's condition.

7 27 c. The advance directive instructions are contradictory.

7 28 d. The advance directive instructions are ambiguous.

7 29 6. ADVANCE DIRECTIVE INVALID. An advance directive is
7 30 invalid if facts, information, or new treatments become
7 31 available that were not known to the declarant at the time the
7 32 advance directive was executed and the declarant would have
7 33 desired knowledge of the facts, information, or new treatment
7 34 in making decisions regarding the advance directive.

7 35 7. FAILURE TO COMPLY.

8 1 a. Negligent failure to comply with an advance directive
8 2 is malpractice.

8 3 b. Intentional failure to comply with an advance directive
8 4 creates a civil liability for the damages proximately caused
8 5 by the failure.

8 6 c. A good faith effort to fulfill the instructions of an
8 7 advance directive that are unclear, ambiguous, or
8 8 inconsistent, or to supplement the instructions with mental
8 9 health care treatment decisions made in the best interests of
8 10 the declarant is an affirmative defense to civil liability for
8 11 mental health care treatment decisions.

8 12 Sec. 6. NEW SECTION. 144C.6 ATTORNEY IN FACT.

8 13 1. PERSONS INELIGIBLE. All of the following persons are
8 14 ineligible to serve as an attorney in fact or substitute
8 15 attorney in fact under an advance directive:

8 16 a. The qualified mental health professional providing
8 17 mental health care to the declarant, unless the professional
8 18 is related to the declarant by blood, marriage, or adoption.

8 19 b. The owner, operator, or administrator of a provider of
8 20 health care or mental health care for the declarant.

8 21 2. AUTHORITY OF ATTORNEY IN FACT. The authority of an
8 22 attorney in fact includes but is not limited to any of the
8 23 following:

8 24 a. The authority to access information regarding the
8 25 declarant's health and mental health care, including the
8 26 authority to act as the declarant's personal representative to
8 27 request, receive, and review records on the declarant's behalf
8 28 consistent with the provisions of the federal Health Insurance
8 29 Portability and Accountability Act of 1996, Pub. L. No.
8 30 104=191.

8 31 b. The authority to make mental health care treatment
8 32 decisions for the declarant if the declarant has been
8 33 determined in accordance with this chapter to not have the
8 34 capacity for making the decisions for the declarant's self.
8 35 This authority is equivalent to the decision-making authority
9 1 that would be available to the declarant if the declarant had
9 2 the capacity to make the decisions. The authority includes
9 3 but is not limited to making decisions whenever the advance
9 4 directive does not identify a mental health care treatment
9 5 appropriate for the declarant's current condition. However,
9 6 an attorney in fact is not authorized to make a mental health
9 7 care decision for a provision of care that is inconsistent
9 8 with accepted or psychiatric or mental health care practice.

9 9 3. WITHDRAWAL. An attorney in fact may withdraw by giving
9 10 reasonable notice to the declarant. If the declarant has been
9 11 determined in accordance with this chapter to be incapable of
9 12 making mental health care treatment decisions for the
9 13 declarant's self, the attorney in fact may withdraw by giving
9 14 notice to a substitute attorney in fact or the qualified
9 15 mental health professional providing mental health care for
9 16 the declarant. The qualified mental health professional shall
9 17 note the withdrawal of the attorney in fact in the declarant's
9 18 medical record.

9 19 4. ATTORNEY IN FACT UNAVAILABLE. If reasonable efforts to
9 20 contact an attorney in fact are unsuccessful, the qualified
9 21 mental health professional providing mental health care for
9 22 the declarant shall make reasonable efforts to contact any
9 23 substitute attorney in fact named in the advance directive.
9 24 If an attorney in fact or substitute cannot be located, the
9 25 qualified mental health professional shall decide upon
9 26 treatment for the declarant in accordance with the spirit of
9 27 the instructions provided in the advance directive. If the
9 28 spirit of the instructions is not discernable, the qualified
9 29 mental health professional shall determine mental health care
9 30 in accordance with the best interests of the declarant.

9 31 Sec. 7. NEW SECTION. 144C.7 REVOCATION OF ADVANCE
9 32 DIRECTIVE.

9 33 1. GENERAL. An advance directive may be revoked in whole
9 34 or in part by the written statement of a declarant who has the
9 35 capacity to make mental health care treatment decisions for
10 1 the declarant's self. A declarant with capacity may also make
10 2 such a revocation by communicating in writing or orally to the
10 3 qualified mental health professional providing mental health
10 4 care for the declarant. A declarant who lacks capacity to
10 5 make mental health care treatment decisions for the
10 6 declarant's self may not revoke the declarant's advance
10 7 directive.

10 8 2. REVOCATION ASSISTANCE. If a declarant communicates
10 9 with an employee or agent of the provider of mental health
10 10 care to the declarant that the declarant is considering
10 11 revising or revoking the advance directive, the provider's
10 12 chief medical officer or the chief medical officer's designee
10 13 shall offer to arrange a meeting between the declarant and a
10 14 qualified mental health professional or attorney to assist the
10 15 declarant in revising or revoking the advance directive. If
10 16 the offer is accepted by the declarant, reasonable efforts
10 17 shall be made for the meeting to take place within seventy-two
10 18 hours of the time of the declarant's communication. In any
10 19 case, the meeting shall take place as soon as possible but in
10 20 no event later than thirty calendar days following the time of
10 21 the declarant's communication.

10 22 3. DOCUMENTATION. The qualified mental health
10 23 professional providing care for the declarant shall note a
10 24 revocation of an advance directive in the declarant's medical
10 25 record.

10 26 4. PRESUMPTION OF CAPACITY. If a declarant's revocation
10 27 of an advance directive was witnessed by two lay witnesses who
10 28 state that in their best judgment the declarant had capacity
10 29 at the time of revocation, there shall be a presumption that
10 30 the declarant had that capacity at the time of the revocation.
10 31 If the declarant's revocation was witnessed by a qualified
10 32 mental health professional who certifies that the qualified
10 33 mental health professional examined the declarant in
10 34 accordance with applicable professional standards and as a
10 35 result of the examination the qualified mental health
11 1 professional determined that the declarant had the capacity to
11 2 execute the advance directive at the time the declarant signed
11 3 the advance directive, there shall be a strong but rebuttable
11 4 presumption that the declarant had the capacity to revoke the
11 5 advance directive.

11 6 Sec. 8. NEW SECTION. 144C.8 ADVANCE DIRECTIVE
11 7 REQUIREMENT PROHIBITED == PENALTIES.

11 8 1. A person shall not be required to execute or refrain
11 9 from executing an advance directive for any reason, including
11 10 but not limited to as a condition to provision of mental
11 11 health care, as a condition to discharge from a medical or
11 12 mental health care treatment provider, or as a condition to
11 13 obtaining health or mental health care insurance coverage or
11 14 for receiving health or mental health care coverage insurance
11 15 benefits.

11 16 2. A person who directly or indirectly threatens, coerces,
11 17 or intimidates an individual to execute or revoke an advance
11 18 directive commits a serious misdemeanor.

11 19 3. A person who willfully conceals, cancels, defaces, or
11 20 obliterates an advance directive without the declarant's
11 21 express consent, or who falsifies or forges a declarant's
11 22 revocation of an advance directive with the intent of altering
11 23 the advance directive in any manner commits a simple
11 24 misdemeanor.

11 25 Sec. 9. NEW SECTION. 144C.9 DIRECTIONS TO MENTAL HEALTH
11 26 CARE PROVIDERS == PRIORITY TO MAKE DECISIONS.

11 27 A properly executed advance directive shall have priority
11 28 over an attorney in fact to determine mental health care
11 29 treatment decisions on behalf of the declarant unless the

11 30 advance directive is ambiguous or unless the declarant has
11 31 elected that all mental health care treatment decisions on
11 32 behalf of the declarant are to be made by the attorney in
11 33 fact.

11 34 Sec. 10. NEW SECTION. 144C.10 CENTRAL REPOSITORY.

11 35 The department of public health shall establish a central
12 1 repository within the state to receive and store properly
12 2 executed advance directives.

12 3 Sec. 11. Section 228.6, Code 2005, is amended by adding
12 4 the following new subsection:

12 5 NEW SUBSECTION. 6. A mental health professional or an
12 6 employee of or agent for a mental health facility shall
12 7 disclose mental health information to an attorney in fact
12 8 under an advance directive for mental health care to the
12 9 extent necessary to meet the requirements of chapter 144C.

12 10 EXPLANATION

12 11 This bill authorizes the use of advance directives for
12 12 mental health care.

12 13 New Code section 144C.1 provides a short title for citing
12 14 the new Code chapter.

12 15 New Code section 144C.2 defines the terms "advance
12 16 directive", "attorney in fact", "capacity", "central
12 17 repository", "declarant", "mental health care", "mental
12 18 illness", and "qualified mental health professional".

12 19 New Code section 144C.3 provides requirements for an
12 20 advance directive, including those addressing the individual
12 21 executing the directive, proper execution, witness
12 22 qualifications, and presumption of capacity by the declarant.

12 23 New Code section 144C.4 provides requirements for mental
12 24 health care providers in connection with an advance directive,
12 25 including written policies and procedures, provision of
12 26 written materials to potential declarants, inclusion of
12 27 advance directive information in an individual's medical
12 28 record, provision of educational opportunities to provider
12 29 staff and the public, and interpretation of the requirements.

12 30 New Code section 144C.5 provides implementation provisions
12 31 for an advance directive including a requirement for the
12 32 declarant to have the capacity to enter into the directive,
12 33 provision for implementation of the advance directive at the
12 34 time the declarant is determined to not have the capacity to
12 35 make decisions, contingencies for making the determination of
13 1 capacity, provision for the advance directive to be binding on
13 2 those providing mental health care, provision for the attorney
13 3 in fact to make decisions when the advance directive does not
13 4 adequately address the declarant's condition, provision that
13 5 an advance directive is invalid when new conditions come into
13 6 existence that the declarant would have desired in making
13 7 decisions concerning the advance directive, and provision for
13 8 addressing civil liability for compliance or lack of
13 9 compliance with an advance directive.

13 10 New Code section 144C.6 addresses requirements for an
13 11 attorney in fact named in an advance directive to access and
13 12 receive mental health care information pertaining to the
13 13 declarant, to make mental health care treatment decisions on
13 14 behalf of a declarant, including eligibility requirements,
13 15 scope of authority, procedure for an attorney in fact to
13 16 withdraw from that responsibility, and the contingency to
13 17 apply when an attorney in fact or substitute attorney in fact
13 18 cannot be contacted.

13 19 New Code section 144C.7 provides for revocation of an
13 20 advance directive by a declarant. The declarant must have the
13 21 decision-making capacity to exercise a revocation. The
13 22 provider of mental health care must assist when a declarant
13 23 informs the provider that the declarant is considering
13 24 revising or revoking a directive. The revocation must be
13 25 noted in the declarant's medical record. If the revocation
13 26 was properly witnessed, the declarant is presumed to have had
13 27 capacity to exercise the revocation.

13 28 New Code section 144C.8 prohibits applying requirements for
13 29 a person to execute or refrain from executing an advance
13 30 directive in order for mental health care to be provided or
13 31 for discharge from a mental health care provider, or as a
13 32 condition for obtaining health care insurance coverage or
13 33 coverage benefits. Applying threats, coercion, or
13 34 intimidation for an individual to exercise an advance
13 35 directive or revoke an advance directive is a serious
14 1 misdemeanor. Willfully concealing, canceling, defacing, or
14 2 obliterating an advance directive without the declarant's
14 3 consent, or falsifying or forging a revocation with the intent
14 4 of altering an advance directive is a simple misdemeanor.

14 5 New Code section 144C.9 provides that a properly executed

14 6 advance directive shall have priority over an attorney in fact
14 7 to determine mental health care treatment decisions on behalf
14 8 of the declarant unless the advance directive is ambiguous or
14 9 unless the declarant has elected that all mental health care
14 10 treatment decisions on behalf of the declarant are to be made
14 11 by the attorney in fact.
14 12 New Code section 144C.10 provides that the department of
14 13 public health shall establish a central repository within the
14 14 state to receive and store properly executed advance
14 15 directives.
14 16 Code section 228.6, relating to compulsory disclosure of
14 17 mental health information, is amended to provide for
14 18 disclosure to an attorney in fact under an advance directive
14 19 for mental health care.
14 20 LSB 2090XS 82
14 21 rh:nh/cf/24