

HOUSE BILL NO. 583

INTRODUCED BY J. ESP

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A MENTAL HEALTH ADVANCE DIRECTIVE; PROVIDING FOR THE CONTENT OF THE ADVANCE DIRECTIVE; PROVIDING THAT THE DIRECTIVE IS BINDING UPON AN INPATIENT FACILITY FROM THE TIME THE FACILITY IS ~~GIVEN NOTICE~~ FURNISHED A COPY OF THE DIRECTIVE; CREATING A CAUSE OF ACTION AGAINST AN INPATIENT FACILITY THAT FAILS TO COMPLY WITH THE DIRECTIVE; PROVIDING DEFINITIONS; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Mental health advance directive authorized -- content -- cause of action created -- definitions.** (1) An individual ~~of sound mind~~ 18 YEARS OF AGE OR OLDER WITH MENTAL CAPACITY may voluntarily execute ~~an~~ A MENTAL HEALTH advance directive providing that if the individual is treated for a mental disorder at an inpatient facility, the ~~matters~~ DIRECTIONS concerning ~~the care and treatment of~~ WHO MUST BE NOTIFIED AND WHO MAY VISIT the individual, as provided in this section, are to be followed. ~~An advance directive signed by the individual that complies with the requirements of this section is valid and binding upon an inpatient facility from the time that the facility is given notice of that directive.~~ AN INPATIENT FACILITY THAT IS FURNISHED A COPY OF A MENTAL HEALTH ADVANCE DIRECTIVE SHALL COMPLY WITH THE DIRECTIVE AND SHALL MAKE THE DIRECTIVE A PART OF THE INDIVIDUAL'S MEDICAL RECORD.

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

(a) who should be notified ~~immediately~~ PROMPTLY in the event of the individual's ADMISSION TO OR treatment at the facility;

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

(c) the duration of the directive.

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

(a) a statement that the individual ~~executes the directive at a time when the individual is mentally competent~~ HAS THE MENTAL CAPACITY TO EXECUTE THE DIRECTIVE and that the directive is executed voluntarily;

(b) a statement that once signed, a directive of which the facility is ~~notified~~ FURNISHED A COPY takes



1 effect upon the DETERMINATION OF THE LACK OF mental incompetency CAPACITY BY THE TREATING MENTAL HEALTH
 2 PROFESSIONAL of the individual and remains in effect until:

3 (i) revoked by the individual, orally or in writing, at a time ~~of mental competency of THAT~~ the
 4 individual HAS THE MENTAL CAPACITY TO REVOKE THE ADVANCE DIRECTIVE, AS DETERMINED BY THE TREATING MENTAL
 5 HEALTH PROFESSIONAL;

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

7 (iii) the individual dies;

8 (c) the signature of the individual; and

9 (d) the signature of two witnesses.

10 (4) (A) AN INDIVIDUAL MAY REVOKE A MENTAL HEALTH ADVANCE DIRECTIVE PROVIDED THAT THE MENTAL
 11 HEALTH PROFESSIONAL CHOSEN BY OR PROVIDED FOR THE INDIVIDUAL DETERMINES IN GOOD FAITH THAT THE INDIVIDUAL
 12 HAS SUFFICIENT MENTAL CAPACITY TO REVOKE THE DIRECTIVE. THE INPATIENT FACILITY SHALL MAKE A VALID REVOCATION
 13 A PART OF THE INDIVIDUAL'S MEDICAL RECORD.

14 (B) An advance directive is valid and enforceable ONLY with respect to the matters provided for
 15 in ~~this section~~ SUBSECTION (2) even if the directive addresses subjects in addition to those provided for in
 16 this section.

17 ~~(5) A person injured by the failure of~~ IF an inpatient facility FAILS to act in accordance with ~~an A~~
 18 MENTAL HEALTH advance directive of which the facility was ~~given notice~~ FURNISHED A COPY, AN INDIVIDUAL WHO
 19 HAS EXECUTED THE MENTAL HEALTH ADVANCE DIRECTIVE OR WHO HAS THE RIGHT TO BE NOTIFIED OR TO VISIT THE
 20 INDIVIDUAL AT THE FACILITY PURSUANT TO A MENTAL HEALTH ADVANCE DIRECTIVE has a cause of action against the
 21 facility ~~for damages sustained by the individual or for injunctive relief, or both,~~ and reasonable costs and
 22 attorney fees incurred in bringing the action.

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

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

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

28 (C) (i) "LACK OF MENTAL CAPACITY" MEANS THAT AN INDIVIDUAL DOES NOT HAVE SUFFICIENT ABILITY TO MAKE
 29 OR COMMUNICATE DECISIONS REGARDING A NEED FOR TREATMENT.

30 (ii) THE LACK OF MENTAL CAPACITY DOES NOT REQUIRE THAT A PERSON BE LEGALLY DETERMINED TO BE AN

1 INCAPACITATED PERSON, AS DEFINED IN 72-5-101. HOWEVER, A PERSON WHO IS UNDER A CURRENT LEGAL
2 DETERMINATION OF BEING AN INCAPACITATED PERSON HAS A LACK OF MENTAL CAPACITY.

3 (D) "MENTAL CAPACITY" MEANS SUFFICIENT ABILITY TO MAKE OR COMMUNICATE DECISIONS REGARDING A NEED
4 FOR TREATMENT.

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6 NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an
7 integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [section 1].

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9 NEW SECTION. Section 3. Applicability. [This act] applies to an advance directive, as defined in
10 [section 1], signed on or after October 1, 2001.

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